RECORD, CASE No. 13,266.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1891.

TERM No., 210.

JOSIAH BEDON, PLAINTIFF IN ERROR,

vs.

WILLIAM R. DAVIE, STEPHEN McP. WOOLFE, AND MARY F., HIS WIFE; JOHN McKENZIE DAVIE, AND ALLEN JONES DAVIE.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE DISTRICT OF SOUTH CAROLINA.

FILED OCTOBER 11, 1888.

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1 THE UNITED STATES OF AMERICA, } *To wit:*
District of South Carolina, at Greenville, }

At a district court of the United States, having and exercising the powers and jurisdiction of a circuit court of the same, for the western district of South Carolina, begun and held at the city of Greenville, in said district, on the first Monday in August, in the year of our Lord one thousand eight hundred and seventy-three—present, the Hon'ble George S. Bryan, judge of said district; Robert M. Wallace, Esq., United States marshal, and Daniel Horlbeck, clerk—among other, were the following proceedings, to wit:

WILLIAM RICHARDSON DAVIE, STEPHEN MCPHERSON WOOLF, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,

against

JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Doctor R. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, Robin Carr Bedon, a Minor, Defendants.

2 Be it remembered that heretofore, to wit, on the thirteenth day of June, in the year of our Lord one thousand eight hundred and seventy-three, the said William Richardson Davie, Stephen McPherson Woolf and Mary Fraser, his wife; John McKenzie Davie and Allen Jones Davie, heirs-at-law of the late Dr. William Richardson Davie, citizens of the State of Texas, plaintiffs, by their attorneys and solicitors, McCrady and Son, filed in the clerk's office of the district court of the United States for the western district of South Carolina, at Greenville, upon the law side of the court, their complaint complaining against James B. Heyward, the younger, and Sarah B., his wife, citizens of the State of South Carolina; Mary Wysong and her husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon and Mary, his wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a minor.

3 THE UNITED STATES OF AMERICA,
Fourth Circuit, Western District of South Carolina.

WILLIAM RICHARDSON DAVIE, STEPHEN McPherson Woolf, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,

against

JAMES B. HEYWARD, the Younger, and Sarah B., His Wife, Citizens of the State of South Carolina; Mary Wyson and Her Husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, J. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

Amended Summons for Relief.

To the defendant Robin Carr Bedon:

You are hereby summoned and required to answer the complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said complaint on the subscribers, at the office of Isaac M. Bryan, Esquire, at Greenville, in the said western district of South Carolina, within twenty days after the service hereof, exclusive of the day of such service; and if you fail to answer the complaint within the time aforesaid the plaintiff- in the action will apply to the court for the relief demanded in the complaint.

4

Dated Greenville, So. Ca., 2nd June, 1873.

(Sig.) McCRADY AND SON,
Pl'ffs' Att'ys.

(Sig.) DAN'L HORLBECK,
C. D. C. U. S. for S. C.

THE UNITED STATES OF AMERICA,
Fourth Circuit, Western District of South Carolina.

WILLIAM RICHARDSON DAVIE, STEPHEN MCPHERSON WOOLF, and Mary Freser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,
against
JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Dr. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

Amended Complaint.

5 UNITED STATES OF AMERICA,
District of South Carolina.

In District Court.

At a district court of the United States for the western district of South Carolina begun and holden at Greenville, for the district of South Carolina, on the first Monday of August, A. D. 1873, before the judge of the said district court, holding said court according to the form of the act of Congress in such case made and provided, the following proceedings were had:

WILLIAM RICHARDSON DAVIE, STEPHEN MCPHERSON WOOLF, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,
against
JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

6 Be it remembered that heretofore, to wit, on the 2d day of June, in the year of our Lord one thousand eight hundred and seventy-three, the said complainants impleaded the said defendants in a bill of complaint for trespass and for damages, &c.; which bill of complaint is in the words and tenor following:

Bill of Complaint.

UNITED STATES OF AMERICA,
District of South Carolina.

In the district court of the United States, holding and exercising circuit court powers, for the western district of South Carolina, sitting at Greenville, for the August term, A. D. 1873.

WILLIAM RICHARDSON DAVIE, STEPHEN MCPHERSON WOOLF, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,

against

JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

7 The plaintiffs complain and allege—

I. That the late General William Richardson Davie, formerly of the State of North Carolina, but late of the district, now county, of Chester, in the State of South Carolina, the great-grandfather of the said William Richardson Davie, Mary Fraser Woolf, John McKenzie Davie, and Allen Jones Davie, being at the time seized and possessed of considerable estate, real and personal, including the premises hereinafter particularly described, on the seventeenth day of September, eighteen hundred and nineteen, duly executed a last will and testament, and some time thereafter, to wit, on the fifth day of November, eighteen hundred and twenty, departed this life, being at the time of his death still seized and possessed of the premises hereinafter described, and leaving his said last will and testament unrevoked and of full force, which will was duly proved — admitted to probate in the court of ordinary for Chester district.

II. That in and by the said will the said testator, after a certain specific devise, directed as follows: Item. I give and devise all the rest and residue of my lands and real estate in the State of South Carolina to my son Frederick William Davie, to him and his heirs forever, subject, however, to the incumbrances mentioned in
8 this will; and it is my desire, and I do hereby devise, that in case of the death of my said son Frederick William without issue male living at the time of his death, then in that case I give and devise the lands and real estate so devised as above to the said Frederick William to his brother Hyder Alli Davie, to him and his heirs forever, subject, however, to the incumbrances in this will mentioned; and in case the said Hyder Alli Davie shall die without

issue male living at the time of his death, then in that case I give and devise the said lands and real estate to the eldest issue male of my son Allen Jones Davie then living when such event shall take place—that is, of the sons he may have living at my death—to him and his heirs forever, subject to the incumbrances directed in this will; and should my said son Frederick William have issue male and such issue male of my said son Frederick William should or shall die without issue male living at the time of his death, then in that case it is my will and I do devise the lands and real estate so devised and described above first to my son Hyder Alli Davie and his heirs and then to the eldest issue male living at the time of Allen Jones Davie under the same limitations and on the same contingencies and the same order and manner as above directed and devised; should my son Frederick William die without any issue male living at the time of his death to them and their heirs forever; and should my son Hyder Alli Davie have issue male living at his death and such issue male shall die without leaving issue male living at his death, then in that case I give and devise the said lands and real estate so devised and described above, should they so have vested under the above contingencies in such issue male, to the eldest issue male then living of my son Allen Jones Davie being of his sons living at my death, to him, his heirs and assigns, forever.

III. That the said rest and residue of the lands and real estate of the testator in the State of South Carolina consisted of his plantation, situated in Chester district, on the Catawba river, known as Landsford, and described in a plat made by Charles Boyd, dated the 19th day of May, 1813, and which lands are designated and contained within the lines in said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 and the islands opposite.

IV. That the family of the testator at the time of his death consisted of the following persons, to wit:

1. Allen Jones Davie, born 16th February, 1785, who then resided out of the State of South Carolina, married, and who then had issue—three sons and one daughter—the eldest of which sons was William Richardson Davie, the father of the plaintiffs William R. Davie, Mary F. Woolf, John McKenzie Davie, and Allen Jones Davie.

2. Hyder Alli Davie, born 29th October, 1786, married, and who then had issue, one daughter, Julia Davie, an infant, afterward the wife of Richard Bedon.

3. Mary Haynes Davie, born 25th June, 1790, then unmarried.

4. Sarah Jones, born 12th March, 1793, then the wife of William F. De Saussure, and who then had issue, two daughters and one son, William Davie De Saussure.

5. Martha Rebecca Davie, born 23rd October, 1796, then unmarried.

6. Frederick William Davie, born 11th April, 1800, then an infant and unmarried.

V. That Frederick William Davie, under the term of the said will,

entered into possession of the said plantation and lands and held the same during his lifetime; that he departed this life on or about the ninth day of April, eighteen hundred and fifty, without issue male living at the time of his death, having had but one child, a son, who died in infancy, unmarried, before him; that he left a last will and testament duly executed, whereof he appointed Frederick G. Fraser and William Davie De Saussure his executors.

11 VI. That prior to the death of the said Frederick William Davie the said Hyder Alli Davie had departed this life, to wit, on the 13th day of June, eighteen hundred and forty-eight, without issue male living at the time of his death, according to the true construction of the said devise.

VII. That at the death of the said Frederick William Davie there was living William Richardson Davie, doctor of medicine, who was the eldest issue male of Allen Jones Davie, son of the testator, living at the death of the said Frederick William Davie, and who was also alive at the death of the testator, and that under the terms of the will of the said testator the said Doctor William R. Davie entered into possession of the said plantation and lands and held the same by himself and his tenants during his life and *and* died possessed thereof, on the fourth day of January, eighteen hundred and fifty-four, intestate.

VIII. That the said Dr. William Richardson Davie left surviving him as heirs-at-law, to take his estate among them, the following persons, to wit:

1. Sarah Rebecca, his widow, who departed this life as such, and intestate, on the 24th day of July, 1867, leaving issue of her marriage with the said W. R. Davie;

2. William Richardson Davie, born 15th June, 1843;

3. Mary Fraser Davie, born 5th September, 1845, and who intermarried with Stephen McPherson Woolf 27th February, 1868.

12 4. John McKenzie Davie, born 25th October, 1847;

5. Sallie Crockett Davie, born 23*nd* September, 1843; died, unmarried and intestate, 28th February, 1872;

6. Allen Jones Davie, born 31st July, 1850;

7. Lucy Green Davie, born 10th November, 1852; died, unmarried and intestate, 21st May, 1870.

That these plaintiffs, citizens of the State of Texas, infants at the time of the death of their said father, are now the only heirs-at-law of the said Dr. William Richardson Davie and of his said wife, Sarah Rebecca, and of their said deceased sisters.

IX. That on or about the first day of January, in the year of our Lord eighteen hundred and seventy-three, the said James B. Heyward and his said wife, Sarah, citizens of the State of South Carolina, the defendants, unlawfully entered into and now are in possession and actual occupancy of said premises without leave of the plaintiffs or any right or title thereto, and unlawfully withhold possession thereof from the plaintiffs, to their damage fifty thousand dollars.

Wherefore the plaintiffs demand judgment—

1. For possession of said premises.

2. Forfi fty thousand dollars' damages by the withholding of the same, together with their costs and charges.

(Sig.) McCRADY & SON,
Plaintiffs' Attorneys.

13 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

In the District Court.

WILLIAM R. DAVIE *et al.*
vs.
JAMES B. HEYWARD *et al.*

To the Honorable George S. Bryan, judge of the district court of the United States:

The petition of Robin Carr Bedon, of said district, respectfully shows—

1. That the above action has been commenced by the service upon petitioner of the summons and complaint herein.

2. That your petitioner is an infant, of the age of seventeen years, on the — day of September last, and resides with his father, Richard S. Bedon, at Walterboro', in said district.

3. That twenty days have not elapsed since the service of the summons upon petitioner.

Wherefore your petitioner asks that his said father, Richard S. Bedon, may be appointed his guardian *ad litem* to appear and defend said action on his behalf.

ROBIN C. BEDON.

PORTER & CONNER,
Att'ys for Pet'r.

14 Endorsements on back:

WALTERBORO', *July 23rd*, 1873.

I certify that on the 23rd day of July, at Walterboro', I served Robin Carr Bedon personally with a copy of amended summons and complaint in this case, William Richardson Davie *et al. vs.* James B. Heyward *et ux. et al.*, by leaving a copy with him.

(Sig.) J. K. TERRY,
Deputy U. S. Marshal, Dist. South Carolina.

Fees, $1.

United States of America, fourth circuit, western district of South Carolina. William Richardson Davie *et al.*, plaintiffs, against James B. Heyward *et ux. et al.*, defendants. Amended summons and complaint. McCrady & Son.

15 STATE OF SOUTH CAROLINA:

Personally appeared Robin Carr Bedon, who, being duly sworn, says that he has read the foregoing petition subscribed by him and knows the contents thereof, and that the same is true of his own

knowledge except as to the matters therein stated on information and belief, and as to those matters he believes it to be true.

ROBIN C. BEDON.

Sworn to before me this 31st day of July, A. D. 1873.
[SEAL.] A. C. SHAFFER, *C. C. C. P.*

I hereby consent to become the guardian of Robin Carr Bedon to defend the action above referred to.
July 31st, 1873.

R. S. BEDON.

16 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

WILLIAM R. DAVIE *et al.*
vs.
JAMES B. HEYWARD *et al.*

On reading and filing the petition of James B. Heyward for the appointment of a guardian *ad litem* for the infant defendants, Alice Bedon and Josiah Bedon, who reside in the State of Maryland—
On motion of Porter & Conner, ordered that James B. Heyward be appointed guardian *ad litem* of the infant defendants, Alice Bedon and Josiah Bedon, and authorized and directed to appear and defend on their behalf the action mentioned in the petition.
28th July, 1873.

GEORGE S. BRYAN,
U. S. Judge, Dist. of So. Ca.

Endorsements on back of order:
Wm. R. Davie *et al. vs.* Jas. B. Heyward *et al.* Order of appointment guardian *ad litem.* Filed 28th July, 1873.

17 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

In the Circuit Court.

WILLIAM R. DAVIE *et al.*
vs.
JAMES B. HEYWARD *et al.*

On reading and filing the petition of Robin Carr Bedon for the appointment of his father, Richard S. Bedon, as his guardian *ad litem* and the consent of the said Richard S. Bedon—
Ordered that the said Richard S. Bedon be, and hereby is, appointed guardian *ad litem* for the said petitioner and authorized and directed to appear and defend the action mentioned therein.
31st July, 1873.
(Sig.) GEORGE S. BRYAN,
U. S. Judge, Dist. of So. Ca.

Endorsements on back of order:

Wm. R. Davie *et al. vs.* Jas. B. Heyward *et al.* Order appointing guardian *ad litem* for infant def'd'ts. Filed 31st July, 1873. (Sig.) J. E. Hagood, C. C. C. U. S. for So. Ca.

18 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

In the Circuit Court.

WILLIAM R. DAVIE *et al.*
vs
JAMES B. HEYWARD *et al.*
Separate Answer of Robin Carr Bedon, by His Guardian *ad litem.*

The defendant Robin Carr Bedon, by Richard S. Bedon, his guardian *ad litem*, answering the complaint herein, says—

That he is an infant, under the age of twenty-one years, and is wholly ignorant of the facts and statements contained in the complaint of the plaintiffs, and is therefore not able to admit or deny the same; that he submits his rights and interest in the premises to the judgment of this honorable court, and prays the judgment of the court for his costs and disbursements in this action.

(Sig.) R. S. BEDON.

STATE OF SOUTH CAROLINA:

Personally appeared Richard S. Bedon, who, being duly sworn, says that the facts and statements contained in the foregoing answer are true of his own knowledge except where stated on information and belief, and as to those matters he believes them to be true.

(Sig.) R. S. BEDON.

Sworn to before me this 31st day of July, A. D. 1873.

(Sig.) A. C. SHAFFER,
[SEAL OF COURT.] *C. C. C. P.*

19 Endorsements on back of answer:

Wm. R. Davie *et al. vs.* Jas. B. Heyward *et al.* Separate answer of Robin C. Bedon, by guardian *ad litem.* Porter & Conner, def'd'ts' att'ys. Filed 31st July, 1873. (Sig.) J. E. Hagood, C. C. C. U. S. for S. C.

20 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

WILLIAM R. DAVIE *et al.*
vs.
JAMES B. HEYWARD *et al.*
Separate Answer of Alice Bedon and Josiah Bedon, by Guardian *ad litem.*

The defendants Alice Bedon and Josiah Bedon, infants, under the age of fourteen years, by James B. Heyward, their guardian *ad litem*, duly appointed, answering the complaint herein, respectfully show to the court:

1. That by reason of their tender years they are wholly ignorant of the facts and statements set forth and made in the complaint of the plaintiff-, and they are therefore not able to admit or deny the same; that they submit their case to the discretion of this honorable court and pray the judgment of the court for their costs and disbursements in this action.

(Sig.) PORTER & CONNER,
Def'd'ts' Att'ys.

UNITED STATES OF AMERICA,
Western District of South Carolina.

Personally appeared James B. Heyward, guardian *ad litem* for Alice and Josiah Bedon, infants, defendants herein, who, being duly sworn, deposeth and saith that the facts and statements in the
21 foregoing answer wherein said of his own knowledge are true, and those matters stated on information and belief he believes to be true.

(Sig.) J. B. HEYWARD.

Sworn to before me this 17th day of July, 1873.

(Sig.) W. J. CLAWSON, *Reg'st.*

Endorsements on back of answer:

Wm. R. Davie *et al. vs.* James B. Heyward *et al.* Answer of Alice and Josiah Bedon. Filed 1st August, 1873. J. E. Hagood, cl'k.

22 THE UNITED STATES OF AMERICA,
Fourth Circuit, Western District of South Carolina,

WM. RICHARDSON DAVIE, STEPHEN MCPHERSON WOOLF, and MARY Fraser, his Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. Wm. Richardson Davie, Citizens of the State of Texas, Plaintiffs,

vs.

JAMES B. HEYWARD, the Younger, and SARAH B., His Wife; MARY Wysong and Her Husband, Dr. —— Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, J. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

The defendants, James B. Heyward and Sarah B., his wife; Mary Wysong and Doctor S. Wysong, Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, J. Stobo Farrow; A. Stobo Beden and Richard S. Bedon, answering the complaint herein, jointly and severally, say:

1. They admit that General William Richardson Davie, formerly

of the State of North Carolina, but lately of Chester, South
23 Carolina, died about the fifth day of November, 1820, seized and possessed of the premises described in the complaint and known as the Landsford estate, and that he disposed of the same by his last will and testament, bearing date 17th day of September, 1819, a copy whereof is filed with the complaint, marked Exhibit A; also that the said General Davie was the great-grandfather of plaintiffs, Wm. R. Davie, Mary Fraser Woolf, John M. Davie, and Allen Jones Davie.

2. They admit that the devise of all the rest and residue of his estate, including the Landsford estate, by General Wm. R. Davie is correctly set out in this section.

3. They admit that a part of said rest and residue was the Landsford plantation, in Chester county, South Carolina, as described in this section.

4. They admit that, according to their information and belief, the family of the testator at the time of his death consisted of the persons named in this section of the complaint, and that their births and deaths are correctly set forth.

5. They admit that Frederick William Davie entered into possession of the Landsford estate under the terms of the will, and held the same during his lifetime, and that he died on or about the 9th day of April, 1850, without issue male living at the time of his death, and that he left a will duly executed, of which he made Frederick G. Fraser and William Davie De Saussure executors.

6. They admit that Hyder Alli Davie, prior to the death
24 of Frederick William, departed this life on or about the 13th June, 1848; but they deny that the said Hyder Alli died without issue male living at the time of his death according to the true construction of the will of General Davie. On the contrary, they aver that he left issue living at his death, to wit, his daughter, Julia, who intermarried with Richard S. Bedon, and his grandsons, Josiah Bedon, Hyder Davie Bedon, William Z. Bedon, and Archibald S. Bedon, the children of said Richard and Julia, which said grandsons were issue male of the said Hyder Alli Davie and were living at the time of his death, except Archibald, who was born after his death, and that said Hyder Alli died testate and devised his whole estate, both real and personal, to Frederick William Davie, Lewis A. Beckham, and William F. De Saussure in trust for the sole and separate use of his daughter, Julia Bedon, for life, with remainder to any child or children she might leave living at the time of her death; and defendants say that Hyder Alli Davie, having left issue male living at the time of his death in the persons of his said grandsons, Josiah Bedon, Hyder Davie Bedon, and William Z. Bedon, his estate in the Landsford property was an indefeasible estate in fee, and that his devise for the benefit of his daughter and grandchildren took effect upon said property.

25 7. They admit that at the death of the said Frederick William there was living William R. Davie, doctor of medicine, who was the eldest issue male of Allen Jones Davie, son of testator, living at the death of said Frederick William, and who was also

alive at the death of the testator, and they admit the said Wm. R. Davie did enter into possession of said plantation and lands and held the same by himself and his tenants during his life, and died possessed thereof on or about the fourth day of January, 1854, intestate; but they deny that by the terms of the will of General Davie he was entitled to enter and that he had under said will any legal rights in said property.

8. They admit that William Richardson Davie left surviving him as heirs-at-law to take his estate the persons named in this section, and that their births and deaths are correctly stated. Whether they are the only heirs these defendants do not know nor had they the information or the knowledge on which to found a belief.

9. Defendants admit that James B. Heyward and his wife have entered into possession and are in the actual occupancy thereof, and that they are citizens of South Carolina; but they deny that their possession was or is unlawful; on the contrary, they aver that they are in lawful possession by virtue of the right and title of the devices of Hyder Alli Davie.

26 For a second defence to this action the defendants show—

1. That some time previous to his death Doctor William Richardson Davie, being in possession of the real estate and lands mentioned in the complaint, made and executed to Frederick G. Fraser, executor of Frederick William Davie, a lease of the premises mentioned, and that the said Dr. William Richardson Davie some few years after died, and that also Frederick G. Fraser, ex'or, also died, and that William Davie De Saussure became the sole executor of said Frederick William Davie; that as such executor of Frederick William Davie the said William Davie De Saussure, being in possession of said lands under the said lease from Dr. William Richardson Davie, the alleged father of the plaintiffs, was impleaded in the court of common pleas for Chester district to answer to Lewis A. Beckham and William F. De Saussure, survivors of Lewis A. Beckham, William F. De Saussure, and Frederick William Davie, trustees under the will of Hyder A. Davie, "of a plea wherefore with force and arms, and so forth, the said defendants broke and entered the close of the plaintiff, situate at Landsford, in the district of Chester and State aforesaid, and then thereupon did eject and hold out, and other wrongs and enormities to them there did, against the peace of the said State and to their damage, &c.,

27 &c," and that to said action of trespass to try title the defendant, by his attorney, pleaded "not guilty," and thereupon the issue was joined.

That said cause came on to be heard before the court of common pleas for Chester district and a jury at the fall term, 1855, and the jury, duly empaneled and sworn in said case, found a verdict for the plaintiffs, from which said verdict of said jury the said defendants appealed; and upon his exceptions in such case filed the said cause came on to be heard in the constitutional court of errors, the highest judicial tribunal in the State of South Carolina and the court of last resort in said States, at Columbia, May term, 1856, and at such hearing the said appeal and motion of the defendant for a new

trial was dismissed; and thereupon the plaintiff- in said action, on the 29th of September, 1856, entered up their judgments in said cause as follows, to wit:

And now, at this day, to wit, the fourth Monday in October, in the year of our Lord one thousand eight hundred and fifty-five, to which day the issue aforesaid was continued in the court of common pleas, at Chester court-house aforesaid, came the parties aforesaid, and the sheriff of Chester district, as thereto before commanded, returns that he has summoned forty-eight good and lawful
28 men to be drawn by ballot, according to the directions of the act of the General Assembly of the said State in such case made and provided, to be and appear before the justices of the said State at the court aforesaid; and afterwards—that is to say, on the day and the place aforesaid, before the justices, comes as well the said Lewis A. Beckham and William F. De Saussure, the plaintiffs, by their attorney aforesaid, as the said William Davie De Saussure, the defendant, by his attorney aforesaid; and the jurors aforesaid being demanded, some of them, to wit, J. H. Stroud, foreman; J. B. Montgomery, Wm. Brown, Abraham Mayfield, G. G. Robinson, J. L. Ferguson, Tresvan Castles, James Casdy, Thomas Lucas, John McKee, Jr., Coleman Crosby, and James Jamison, came, and, being drawn by ballot according to the directions of the act of the General Assembly aforesaid and sworn of the jury aforesaid to say the truth of the within contained, do on their oaths say that the plantation at Landsford, the subject of this suit, was the property of General William Richardson Davie at the time of his death, which occurred on the 5th of November, 1820; that Gen. Wm. B. Davie devised this plantation as in his will mentioned, dated the 17th September, 1819, which will is made a part of this verdict.

That Frederick William Davie, his son, died on April —, 1850, without leaving issue male living at the time of his death; he had a son, but he died before him; that Hyder A. Davie died on the 13th
29 June, 1848, leaving no son living at the time of his death, but a daughter, Julia, him surviving, who before his death had intermarried with Richard S. Bedon; that the issue male of that marriage were Josiah Bedon, Hyder Davie Bedon, William Z. Bedon, and A-chibald Stobo Bedon, all living at the death of Hyder A. Davie, and his brother, Frederick William Davie, except the last, Archibald S. Bedon, who was born after the death of Hyder A. Davie.

That at the death of Frederick William Davie there was living a son of Allen Jones Davie, viz., William Richardson Davie, born in 1816, being the eldest of the issue of Allen Jones Davie, which William R. Davie departed this life in 1854, leaving issue.

That after the death of Frederick William Davie, to wit, on the 29th April, 1850, William R. Davie, claiming the said plantation under the limitations contained in the will of Gen. W. R. Davie, leased the same to Frederick G. Fraser, executor of F. W. Davie, for ten years for the annual consideration of twenty thousand pounds of ginned cotton, deliverable at said plantation, and that F. G. Fraser

continued in possession, cultivating the same, until his death, on the 1st February, 1852, after which period the defendant, as executor of Frederick William Davie under the lease, took and yet holds possession.

That Hyder A. Davie left a will, dated 24th March, 1847, devising his whole estate as is therein mentioned, which will is made a part of this verdict.

30 That William Davie De Saussure was born in December, 1819, of which fact his grandfather, Gen. Wm. R. Davie, was aware; that the family of Gen. W. R. Davie consisted at his death and at the date of his will of the following persons, to wit: His son, Allen Jones Davie, who had issue then living, several sons and daughters, the eldest of which sons was William Richardson Davie; also Hyder Alli Davie, who had but one child, a daughter, born at the date of the will and then an infant; also a son, Frederick William Davie, who was his youngest child and unmarried at his death; also a daughter, Mary, who was unmarried at the time of his death; also a daughter, Martha Rebecca, who was unmarried at the period of his death; also a daughter, Sarah Jones Davie, who prior to his death, viz., in 1815, had intermarried with William F. De Saussure and had issue living at the death of her father as follows: Eliza Gabriella, who since the death of Gen. Davie intermarried with Dr. Henry K. Burroughs; Sarah Jones, who since the death of her said grandfather intermarried with Alex. Hamilton Boykin, and William Davie De Saussure, the date of whose birth is stated above.

That Gen. W. R. Davie was a distinguished lawyer and had formerly practised for many years in the State of North Carolina.

31 If upon the facts thus found the court shall be of opinion that the plaintiffs are entitled to the land, then we find for the plaintiffs the land described in the plat made by Charles Boyd, dated 17th day of May, 1813, and made a part of this verdict, and which lands are designated and contained within the lines indicated on the said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28 ,29, 30, 31 and the islands opposite and five dollars damages; but if upon the facts found the court shall be of opinion that the plaintiffs have no title to the said land, then the jury aforesaid find for the defendant.

And thereupon, all and singular the premises being seen and by the court now here fully considered, for that it appears to the said court that the said plaintiffs, Lewis A. Beckham and William F. De Saussure, have right and are entitled to the lands and tenements in their declaration aforesaid described and in the said verdict mentioned, therefore it is considered that the said plaintiffs do recover against the said defendants the lands and tenements above mentioned and five dollars for their damages so found by the jurors aforesaid against the said defendant for the trespass by him committed as in the declaration aforesaid alleged, and also twenty-two dollars and sixty-two and a half cents for their costs and charges

by the plaintiffs in and about prosecuting their suit in this
32 behalf expended and to them by the court now here with their assent adjudged, and be the said defendants in mercy, and so forth.

(Sig.) —— DE SAUSSURE, *Pl'ffs' Att'y.*

as by the record and proceedings thereof still remaining in said court of common pleas for Chester district, now county, more fully and at large appears, which said judgment still remains in full force and effect, not in the least reversed or made void.

And the said defendants aver that by said judgment of said court of common pleas aforesaid and by the said adjudication of the questions therein in litigation between the parties by the constitutional court of errors of the State of South Carolina the rights of the plaintiffs were fully and finally determined and adjudged, and that they are thereby barred from all right of recovery whatever against the defendants.

And the defendants as to each and every the other allegations in said complaint deny the same to be true.

And for a third ground of defence the defendants shew—

That as to the said supposed trespasses in the said complaint mentioned they say that the said plaintiffs ought not to have or maintain their said action against the said defendants, because the said defendants were not guilty of the said supposed trespass- in said complaint mentioned or of any or either of them or of any part thereof in manner and form as the said plaintiffs have above
33 thereof complained against them at *every* time within ten years next before the exhibiting of the complaint of the said plaintiffs against the said defendants.

(Sig.) PORTER & CONNER,
" S. P. HAMILTON,
Def'd'ts' Att'ys.

UNITED STATES OF AMERICA, }
Western District of South Carolina. }

Personally appeared James B. Heyward, one of the defendants, who, being duly sworn, deposes and saith that the facts hereinabove set forth wherever of his own knowledge are true, and those matters stated on information and believe he believes to be true.

(Sig.) J. B. HEYWARD.

Sworn to before me this 17th July, 1873.

J. E. HAGOOD,
C. C. C. U. S. for So. Ca.

Endorsements on back of answer:

Wm. Richardson Davie *et al. vs.* Jas. B. Heyward, Jr., & wife *et al.* Filed 31st July, 1873. (Sig.) J. E. Hagood, C. C. C. U. S. for S. C.

34 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

WILLIAM RICHARDSON DAVIE, STEPHEN MCPHERSON Woolf, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,

against

JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Doctor —— Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, J. Stobo Farrow; A. Stobo Bedon, and Robin Carr Bedon, a Minor, Defendants. } Reply.

The plaintiffs, replying to the answer of the defendants, James B. Heyward, Jr., and Sarah B., his wife; Mary Wysong and Dr. R. Wysong, Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, J. Stobo Farrow; A. Stobo Bedon, and Richard Bedon, herein, as the second ground of defence, say:

35 I. That they deny that these rights were determined and adjudged or in any way affected by the judgments in the case of Lewis A. Beckham and William F. De Saussure, surviving trustees of Hyder A. Davie, against William D. De Saussure, set out in the said defendants' answer; that the said proceedings and judgment thereon were not had between the same parties as the parties to this cause and did not involve the same subject-matter, nor are the plaintiffs in this cause in any way privies in blood or estate to any party or parties in the said cause of Beckham and De Saussure, trustees, against William D. De Saussure, and that they, the said plaintiffs, are in nowise bound by the judgment therein.

II. That they deny that William D. De Saussure, the defendant in the cause of Lewis A. Beckham and William F. De Saussure, trustees, against William D. De Saussure, was in possession of the premises mentioned in the plaintiffs' complaint at the time of the commencement of the said suit of Beckham and De Saussure against W. D. De Saussure or at any other time.

III. That before the institution of the said proceedings in the said cause of Lewis A. Beckham and William F. De Saussure, trustees, against the said William D. De Saussure, to wit, on the 28th of June, 1850, a bill in equity was filed by Frederick G. Fraser, execu-

tor of Frederick William Davie, wherein the said William R. Davie, father of the plaintiffs, Richard S. Bedon and Julia A. Bedon, his wife (father and mother of the defendants Hyder D.
36 Bedon, William Z. Bedon, Julia Izard, Jeannie Farrow, Sarah B. Heyward, Richard Bedon, and Robin C. Bedon, Josiah Bedon (father of the infant defendants, Alice Bedon and Josiah Bedon), Hyder D. Bedon, and William Z. Bedon, defendants in this cause, and the said Lewis A. Beckham and William F. De Saussure, surviving trustees of the will of Hyder A. Davie (the plaintiffs in the said cause mentioned in the answer of the said defendants), were impleaded as defendants, the subject-matter of which said action was the title of the said William R. Davie, the father of these plaintiffs, to the said premises under the will of General William R. Davie; that the said cause having been heard, a decree of the said court was delivered and duly entered at Columbia, for the district of Richland, the 19th of March, 1851, whereby the title in fee of the said William R. Davie, father of these plaintiffs, in the said lands was confirmed and the said William R. Davie declared to be in rightful possession thereof.

That the said decree stands as the judgment of the said court unreversed and now of force, and that the said defendants to this cause respectively, as parties or privies to parties in the said cause of Frederick Fraser, executor, against William R. Davie and the other defendants, as above mentioned, are bound, concluded, and determined by the said decree therein confirming the title of the said William R. Davie (father of the plaintiffs) in this cause to the said premises.

(Sig.) McCRADY & SON,
Pl'ffs' Att'ys.

37 Endorsements on back:

United States of America, western district of South Carolina. William Richardson Davie *et al.* against James B. Heyward, Jun'r, *et al.* Reply. McCrady & Son: We accept service of a copy of within reply. 29th July, 1873. (Sig.) Porter & Conner, def'd'ts' att'ys.

38 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

WILLIAM RICHARDSON DAVIE, STEPHEN McPherson Woolf, and Mary Fraser, His Wife; John McKenzie Davie, and Allen Jones Davie, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,

against

JAMES B. HEYWARD, the Younger, and Sarah B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeannie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants.

Plaintiffs' Notice of Trial.

Take notice that the issues of law and fact in this action will be brought to trial and an inquest taken therein at a district court appointed to be held in and for the western district of South Carolina, at Greenville, on the first Monday of August next, unless the same has been previously tried.

Dated 13th June, 1873.

(Sig.) McCRADY & SON,
Plaintiffs' Attorneys.

To S. P. Hamilton and Porter & Conner, defendants' attorneys.

39 Endorsements on back:

We accept this notice of trial. 13th June, 1873. (Sig.) Porter & Conner. United States of America, western district of South Carolina. William Richardson Davie *et al.*, plaintiffs, against James B. Heyward, the younger, *et al.*, defendants. Plaintiffs' notice of trial. McCrady & Son, pl'ffs' att'ys. Filed 13th June, 1873. Dan'l Horlbeck, C. D. C. U. S. for S. C.

40 *Special Verdict.*

We find:

First. That the plantation at Landsford, the subject of this suit, was the property of General William Richardson Davie at his death, which occurred on the fifth day of November, 1820, and that General Davie devised the plantation under the residuary clause in his will, dated the 17th September, 1819.

Second. That the family of the testator at the time of his death consisted of the following persons:

1. Allen Jones (son), born 16th February, 1785 (who resided out of the State of South Carolina), married, and who then had issue, three sons and one daughter, the eldest of whom was William Richardson, the father of the plaintiffs in this case, which son, Allen Jones, by a second marriage had issue, five daughters and another son.

2. Hyder Alli (son), born 29th October, 1786 (who resided near but not with the testator), married, and who then had issue, one daughter, Julia A., then a minor unmarried, but who afterwards married Richard S. Bedon and was mother of the defendants, as herein mentioned.

3. Mary Haynes (daughter), born 25 June, 1790, then unmarried, residing with the testator; afterwards the wife of John Crochett, with issue, two sons and two daughters.

4. Sarah Jones, daughter, born 12th March, 1793, then the
41 wife of William F. De Saussure, with issue then born, two daughters, and a son, who was born — December, 1819, and was called after the testator, William Davie De Saussure, and which daughter afterwards had issue, another daughter and two sons.

5. Martha Rebecca (daughter), born 13th October, 1796, then unmarried, residing with the testator; afterwards the wife of Churchill B. Jones, with issue, a son and daughter.

6. Frederick William, son, born 11th April, 1800, then residing with the testator, an infant and unmarried.

Third. That upon the death of General Davie, Frederick William entered into and took possession of the said plantation under the devise in his father's will, and held the same until his death, which took place on the 29th April, 1850, he having had but one child, a son, who died in infancy before his father's death, to wit, in 183[illegible].

Fourth. That Hyder Alli died before Frederick William, to wit, 13th June, 1848, having had issue but one child, a daughter, before mentioned, to wit, Julia A., who after Gen. Davie's death had intermarried with Richard S. Bedon, by whom she had issue as follows: 1, Josiah Bedon, now deceased, leaving a widow, Mary, now the wife of Doctor R. Wysong, and two children, Josiah and
42 Alice Bedon, minors; 2, Hyder Davie Bedon; 3, William Z. Bedon; 4, Julia, wife of Allen C. Izard; 5, Jeannie B., wife of T. Stobo Farrow; 6, Sarah B., wife of James B. Heyward, the younger (the said James B. Heyward and Sarah B., his wife, being now the true tenants of the lands in question); 7, A. Stobo Bedon; 8, Richard Bedon, and, 9, Robin Carr Bedon; the last of whom is still a minor, and all of whom now living are defendants in this cause, and of whom Josiah, Hyder D., and William Z. were living at the death of their grandfather, Hyder Alli, and A. Stobo born after his death and before the death of Frederick William Davie.

Fifth. That Hyder Alli, by his last will and testament, a copy of which is made part of this verdict, devised and bequeathed his whole estate, real and personal, to Frederick William Davie, Lewis

A. Beckham, and William F. De Saussure in trust for his daughter, Mrs. Bedon, and her children.

Sixth. That Frederick William, during his last illness, sent for Dr. William R. Davie, then a resident of Alabama, to come to him at Landsford to arrange with him for the continued occupation of the lands by the widow of Frederick William after his death; that Dr. William R. Davie did accordingly make a journey to South Carolina, but did not reach Landsford until after his uncle's death; that upon the arrival of the said Dr. William R. Davie from
43 Alabama, after the death of the said Frederick William, he entered upon and took possession of the said lands and, in compliance with his uncle's wishes, leased the same to Frederick G. Fraser, the brother of the widow and the qualified executor of Frederick William, for a term of ten years at an annual rent of twenty thousand pounds of ginned cotton; that Frederick G. Fraser, as executor, having thus, in compliance with the wish of Frederick William Davie, secured a lease of the place for a number of years, placed Churchill B. Jones, son of Martha Rebecca Jones and nephew of the said Frederick William, in charge of the place, and the widow, with the said Churchill B. Jones, continued to reside upon the said lands and, with the said Churchill B. Jones, worked the said plantation in the interest of the estate of Frederick William until dispossessed under the proceedings in the case of Beckham and De Saussure against De Saussure.

That on the 28th of June, 1850, Frederick G. Fraser, brother of the said widow and the said executor of Frederick William Davie, filed a bill in equity in Richland district, praying to be relieved from the said lease on the ground of mistake, as he had since been advised that the title to the said lands was not in the said
44 William R. Davie, but either in the heir general of Hyder Alli or in the grandsons of Hyder Alli, the sons of Mrs. Julia A. Bedon; that to this suit William R. Davie, Richard S. Bedon, and Mrs. Julia A. Bedon and their sons, Josiah Bedon, Hyder D. Bedon, and William Z. Bedon, and Lewis A. Beckham and William F. De Saussure, trustees under the will of Hyder A. Davie, were made parties and the bill taken *pro confesso* against all the defendants.

That the cause came on to be heard before Chancellor Johnston, who, on the 19th March, 1851, by decree dismissed the said bill; that notice of appeal from this decree was given, but the appeal was not prosecuted and finally abandoned, and the decree remains unreversed; copies of which lease, bill, and decree are made part of this verdict.

That William R. Davie, then residing in Alabama, remained in possession of the lands by his tenants under the lease until his death, which took place on the 4th January, 1854.

Seventh. That some time after the death of Dr. William R. Davie, to wit, on the 9th September, 1854, an action of trespass to try title was brought by Lewis A. Beckham and William F. De Saussure, as survivors of Frederick William Davie, Lewis A. Beckham, and Wil-

liam F. De Saussure, trustees under the will of Hyder Alli
45 Davie, against William D. De Saussure in the court of common pleas for Chester district, and upon a special verdict found it was adjudged that the said plaintiffs Lewis A. Beckham and William F. De Saussure had right and were entitled to the said lands, and that the said plaintiffs should recover against the said defendant, William F. De Saussure, the said lands; which judgment was, upon appeal, confirmed by the court of errors for the State of South Carolina, a copy of the record in which case is made part of this verdict; that under this judgment the said Lewis A. Beckham and William F. De Saussure obtained possession of the said lands in the year 1856.

Eighth. That Frederick G. Fraser, executor of Frederick William Davie, departed this life on or about the 1st February, 1852, and that thereupon William D. De Saussure, who had been named as executor in the will of Frederick William Davie, qualified thereon.

Ninth. That some time after the decision of the court of errors of the State of South Carolina of the case of Beckham and De Saussure against De Saussure and final judgment entered thereon in the court of common pleas for Chester district proceedings were had in the court of equity for Chester district by and among the children of Mrs. Julia Bedon for a partition of the Landsford plantation
46 among said children; that under said proceedings the said Landsford plantation was sold by the commissioner in equity for Chester district, and that Churchill B. Jones became the purchaser, paying a portion of the purchase-money in cash and giving his bond with a mortgage of the premises for the balance; that thereafter Churchill B. Jones conveyed a considerable portion of said Landsford plantation to Cadwalader Rives and W. D. Fudge and remained in possession of the remainder himself; that thereafter the commissioner in equity for Chester district filed his bill in the court of equity for Chester district against said Churchill B. Jones, C. Rives, and W. D. Fudge for a foreclosure of the mortgage given to said commissioner in equity to secure the purchase-money; that under said proceedings a decree of foreclosure was had, a sale ordered, and the premises sold by said commissioner in equity, and that at said sale T. Stobo Farrow, as the agent of the children of Mrs. Julia Bedon, became the purchaser, and that under said title the defendants now hold, and that the defendant James B. Heyward is now in possession under a lease from T. Stobo Farrow, as said agent of said heirs.

Tenth. That the said plaintiffs, William R. Davie, Mary
47 Fraser, wife of Stephen McPherson Woolf; John McKenzie Davie, and Allen Jones Davie, are the only surviving heirs-at-law of the said Dr. William R. Davie, who died intestate, and that the said plaintiffs *who* are citizens of the State of Texas and are of the ages following, to wit: William R. Davie, born 15th June, 1843; Mary Fraser Woolf, born 5th September, 1845; John McKenzie Davie, born 24th October, 1847, and Allen Jones Davie, born 31st July, 1850.

If upon the facts thus found the court shall be of opinion that

the plaintiffs are entitled to the land, then we find for the plaintiffs the land described in the plat made by Charles Boyd, dated 17th May, 1813, as mentioned in the plaintiffs' complaint, and which lands are designated and contained within the lines indicated in the said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, and the islands opposite, and five dollars' damages; but if upon the facts found the court shall be of opinion that the plaintiffs have no title, then we find for the defendant.

(Sig.) J. P. HILLHOUSE, *Foreman.*

8th August, 1873.

Endorsements on back:

The United States of America, western district of South Carolina. William Richardson Davie *et al. vs.* James B. Heyward, Jr., *et al.* Special verdict.

48 STATE OF SOUTH CAROLINA, *ss:*

I William Richardson Davie of the district of Chester in the State aforesaid declare and publish the following will as my last will and testament.

First. I give and bequeath to my daughter Mary Haynes Davie the following negro slaves to wit Rose with her following children Sam, John, Elph, Dick Patty and assign the negro woman Venus wife of Sam the woman Weaver and her children Winney and Francis, the negro woman Harriet and her two children Allen and Sophia and the negro woman Nielv and also such further issue as any of the said women may have at my death.

Item I give and bequeath to my daughter Sarah Jones De Saussure in addition to the slaves I have already given her the following to wit Anthony and his son Shadrack.

Item I give and bequeath to my daughter Martha Rebecca Davie the following negro slaves Old Kate and her son Peter, Philis wife of Peter Harry son of Philis Old Ben Black Venus and her following children to wit Dave, Seth, Jem, Mary, Alfred, and Lucine together with the negro man Batt and the negro woman Charity and such issue as the said Charity and Seth may have at my death.

Item I give and bequeath to my daughter Mary Haynes
49 Davie the sum of three thousand dollars to be paid to her as soon as the same can be raised out of the proceeds, or crops of my estate, in manner hereinafter mentioned.

Item I give and bequeath to my daughter Sarah Jones De Saussure, the sum of four thousand dollars, to be paid to her as soon as the same can be raised, out of the proceeds, or crops of my estate, in manner hereinafter mentioned

Item I give and bequeath to my daughter Martha Rebecca Davie, the sum of three thousand dollars, to be paid to her, as soon as the same can be raised out of the proceeds, or crops of my estate, in manner hereinafter mentioned.

Item It is my will, that the negro slaves so bequeathed as above to my daughters, Mary Haynes Davie, Sarah Jones De Saussure,

and Martha Rebecca Davie shall be delivered to them as soon as the demands against my estate, and the money legacies bequeathed in this will shall be paid, except one negro woman or girl, as a maid to my daughter Mary, and also to my daughter Martha Rebecca, to be chosen by them respectively, when they think proper, from among the negroes bequeathed to each of them above; and I do positively direct that every proper exertion be made for the payment, as soon as practicable of the above money legacies

Item I give and bequeath to my daughters Mary Haynes
50 Davie, and Martha Rebecca Davie, that is to each of them, the sum of two hundred dollars to be paid to them respectively, and annually, on the first day of May, in every year until the said negro slaves so bequeathed to them, by this will shall be delivered to them agreeably to this will.

Item I have given to my daughter Mary Haynes Davie the gold watch now in her possession, also the piano forte, and I now give and bequeath to her a bed, bedstead and the necessary furniture to it to be chosen by herself, unless I should give her such before my death.

Item I give to my daughter Martha Rebecca Davie a gold watch, to be purchased by my executors, should I not give her one before my death, also the bedstead she now uses, and the necessary furniture to it to be chosen by her, after her sister hath made choice.

Item I give and bequeath to my daughter Sarah Jones De Saussure, my diamond ring bequeathed to me by my friend Stephen Cabanas.

Item I give and bequeath to William Richardson Davie eldest son of Allen Jones Davie, the following negroes to wit, Durham and Martin and their children Lettice Simon and Henry and also all the money his father Allen Jones Davie may owe me at my death, together with such other issue as the said Martin may have at my death.

Item Being desirous to provide a residence for life for my
51 friend and kinsman Robert Kerr it is my will and I do devise that he be permitted to reside on the land I bought of John Rives during his natural life with liberty to cultivate as much of the cleared land as he may think fit, and get what timber he may want from any of my adjacent land.

Item In addition to the slaves I have already given my son Hyder Alli Davie I also give him the following negro slaves viz Harry with his wife Tilla and their children to wit Taylor, Stephen, Asa, and Jones, and also such other issue as the said Tilla may have at my death, also the negro man Tom and his wife Peg and their child Chloe, and such other issue as the said Peg may have before my death, also Cudjoe and his son Phill, also the negro man Ben, and his sister Pleasant, and such issue as the said Pleasant may have at my death; also the negro man Bill and his wife Patt, with her children Lilly Jack Fanny, Williamson and Warren, and all such issue as the said Patt may have more at my death, also old Joe and his wife Luce, with their children Charles, Ivora, Frank, and Millgy, also the negro man called Daniel and the negro woman

called Edie and her daughter Amy. These negroes however shall remain in the hands of my executors, as part of my estate, until my debts and money legacies are paid, as herein and hereafter in this will directed.

52 Item I give and devise to the governor of the State of South Carolina, his successors forever, four acres of land to be laid off adjoining the present public grave-yard, in my land on the south side thereof in trust for the use of the people, in my neighborhood, as a burying-ground forever and as a site for a house for the public worship of God, should any Christian congregation think proper so to use it.

Item I give and devise all the rest and residue of my lands and real estate in the State of South Carolina to my son Frederick William Davie to him and his heirs forever, subject however to the incumbrances mentioned in this will. And it is my will and I do hereby devise that in case of the death of my said son Frederick William, without issue male living at the time of his death, then in that case I give and devise the lands and real estate, so devised as above to the said Frederick William to his brother Hyder Alli Davie to him and to his heirs forever, subject however to the incumbrances in this will mentioned. And in case the said Hyder Alli Davie die without issue male living at the time of his death, then in that case I give and devise the said lands and real estate to the eldest issue male of my son Allen Jones Davie then living when such event shall take place; that is of the sons he may have living

53 at my death, to him and his heirs forever, subject to the incumbrances, directed in this will And should my said son Frederick William have issue male, and such issue male of my said son Frederick William should, or shall die without issue male living at the time of his death, then in that case it is my will and I do devise the lands and real estate, so devised and described above first to my son Hyder Alli Davie and his heirs, and then to the eldest issue male living at the time, of Allen Jones Davie, under the same limitations, and on the same contingencies, and in the same order and manner, as above directed, and devised, should my son Frederick William die without any issue male living at the time of his death, to them and their heirs forever. And should my son Hyder Alli Davie have issue male living at the time of his death and such issue male shall die without leaving issue male living at his death then in that case I give and devise the said lands and real estate so described and devised above should they so have vested under the above contingencies in such issue male to the eldest issue male then living of my son Allen Jones Davie being of his sons living at my death to him his heirs and assigns forever.

Item It is my will and I hereby devise and direct that

54 until the demands against my estate and the money legacies bequeathed by this will are fully discharged and paid, my negro slaves bequeathed to my daughters, and those bequeathed to my son Hyder Alli, and those bequeathed by the residuary clause of this will to my son Frederick William, that is all my negro slaves except as in this will excepted shall be kept, and

worked together, on my plantation, on the Catawba river, and the proceeds of the crop shall be applied to the above purposes of the payment of debts, and legacies, until they are fully discharged It is to be clearly understood, as my will, and I so will and direct that the mules and horses, heretofore used on the plantation, the stock of every kind, plantation tools, and utensils of every kind, with those of the blacksmith's shops, remain to be used with the negroes on the plantation as heretofore, until the above object of the payment of debts, and legacies shall be completely effected.

Item It is my will and I hereby direct that my mills shall be kept in repair at the expense of my estate until the above object of paying debts, and legacies is effected, and the profits and proceeds thereof applied also jointly with the proceeds of my other estate to the raising and paying the money so required

55 Item I give and devise to my son Allen Jones Davie, the lands I bought of Armstrong, in the State of Tennessee, to him, and his heirs.

Item. I give and bequeath to my said son Allen Jones Davie, all the silver plate given to my late wife, his mother, by his grandfather General Jones

Item In addition to what I have already given to my son Hyder Alli Davie, I also give and bequeath to the said Hyder Alli Davie twelve hundred and fifty dollars, unless I should advance that sum to him, before my death in which case this legacy is revoked.

Item I give and bequeath my gold watch and family seal to my son Frederick William to be delivered to him, when he is twenty one years of age; and in case of his death before that time I give them to my son Allen Jones Davie.

Item I give my arms and military accoutrements to my son Frederick William and in case of his death without a son, then to Allen Jones Davie. Let them never forget that those arms were honorably employed in establishing the liberties of their country, and I request that they may be preserved in the family forever.

Item I give and bequeath to my son Frederick William the whole of my library, whether books, or manuscripts, and in case of

56 his death before he is twenty one years of age I give them to his brother Allen Jones Davie.

Item I give and bequeath to Isaac, the son of Comtrark by the name of Isaac Moncrief, his time of service, and hereby also declare him free and manumitted forever.

Item I give and bequeath to the said Isaac Moncrief the sum of five hundred dollars, to be paid to him when he is twenty-one years of age, and I hereby appoint my son Frederick William guardian of the said Isaac, and it is my will that he the said Isaac shall be bound apprentice, to the carpenter trade when he is eighteen years of age.

Item I give and bequeath to my servant Comtrark, the remainder of her time of service, and hereby declare her free, and manumitted forever. And I also give her the sum of fifty dollars and I charge my children and executors to see that this part of my will relating

to the said Isaac and the said Comtrark is carried conscientiously into complete effect.

Item I give to my servants Ned, Nancy, and Kello, the sum of ten dollars each.

Item It is my will and I hereby direct that whatever may be the state of my crops at the time of my death, whether growing or housed, that the proceeds of the same after the supply of the
57 plantation and family and the proceeds of the mills if any on hand, shall make part of the fund to the payment of debts, and legacies, as well as the money on hand due to me.

Item I give and bequeath to my son Frederick William, two hundred dollars to be paid to him annually until the debts and legacies are paid, and he shall take under the residuary clause in this will.

Item I give and bequeath all the rest and residue of my estate, whether real or personal, of whatever kind the same may be to my son Frederick William Davie, to him and his heirs. The slaves, horses, mules, utensils and other articles mentioned being subject to the directions of this will until the debts, and legacies are paid. And I earnestly recommend his sisters to his protection and unremitted attention. As I know not when I shall die, or what may be the condition of my family at the time it is my will and I do hereby direct that my daughters Mary Haynes Davie, and Martha Rebecca Davie, shall if they, or either of them choose to reside at my dwelling house, have the use of my dwelling-house, kitchen and other offices, with the furniture of the house, my carriage, and carriage horses, my servant Ned, and cook, until they have received
58 the whole of the property bequeathed to them by this will the stock of provisions and necessaries provided and on hand shall be enriched for the use of them, and their brother, Frederick William and a regular and sufficient supply of provisions set apart for them annually, should they thus live together until the above event takes place. And I do hereby will and direct that my dwelling-house, and all the other houses on the plantation, be kept in proper repairs by the estate, until the arrangements by this will directed are fully effected.

Item I hereby appoint my son Hyder Alli Davie, and my son in law William F. De Saussure, guardians to my son Frederick William, and I recommend the care of the mind and morals of this young man, most earnestly to them.

Item I hereby appoint my son Hyder Alli Davie, and my son in law William F De Saussure executors to this my last will and testament and also my son Frederick William when he shall attain the age of twenty-one years, hereby declaring this to be my last will and testament written altogether with my own hand, and expressed I hope in so plain a manner, that my intention cannot be mistaken, with my name written on each page.

In witness whereof I have hereunto set my hand and seal
59 this 17th day of September in the year of our Lord eighteen hundred and nineteen.

(Sig.) W R DAVIE. [L. S.]

Signed and published in the presence of
CADWALLER JONES
ALLEN JONES GREEN
FRED L. J PRIDE

STATE OF SOUTH CAROLINA, }
Chester County. }

I do hereby certify that the foregoing eleven pages contain a true copy of the last will and testament of General William Richardson Davie, dec'd, that has been admitted to probate and allowed and recorded in the probate court for Chester county.

Given under my hand and the seal of the probate court for the county aforesaid this thirteenth day of March, 1873.

[SEAL OF COURT.] MATTHEW WILLIAMS,
Clerk of the Probate Court for Chester County.

Endorsements on back of will:
Will of Gen'l William R. Davie. In evidence. (Sig.) G. S. B., J. 4th Aug't, '73.

60 SOUTH CAROLINA, }
Richland District. }

In the Court of Equity.

To the honorable the chancellors of the State aforesaid:

Humbly complaining, sheweth unto your honors your orator, Frederick G. Fraser, executor of the last will and testament of Frederick William Davie, deceased, that the late General William Richardson Davie departed this life on the fifth day of November, in the year of our Lord one thousand eight hundred and twenty, leaving a will, well executed, to pass real estate, dated the seventeenth day of September, in the year of our Lord one thousand eight hundred and nineteen, whereof a copy is herewith filed, marked Exhibit "A," to which your orator craves reference; that by his said will the testator, William R. Davie, devised, *entir alia*, as follows:

"I give and devise all the rest and residue of my lands, and real estate, in the State of South Carolina, to my son Frederick William Davie to him, and his heirs forever, subject however to the incumbrances mentioned in this will. And it is my will, and I do hereby devise, that in case of the death of my said son Frederick William Davie, without issue male living at the time of his death, then, and in that case, I give and devise the lands and real estate, so de-
61 vised as above to the said Frederick Wm., to his brother Hyder Alli Davie, to him, and his heirs forever, subject, however, to the incumbrances, in this will mentioned. And in case the said Hyder Alli Davie shall die without issue male living at the time of his death, then in that case, I give and devise the said lands, and real estate, to the eldest issue male, of my son Allen Jones Davie then living, when such an event shall take place, that is, of the sons he may have living at my death, to him, and his heirs forever, subject to the incumbrances directed in this will. And should my son

Frederick William have issue male, and such issue male of my said son Frederick William, should or shall die without issue male living at the time of his death, then in that case it is my will, and I do devise the land and real estate so devised, and described above, first to my son Hyder Alli Davie, and his heirs, and then to the eldest issue male living, at the time of Allen Jones Davie, under the same limitations, and on the same contingencies, and in the same order, and manner, as above directed and above devised, should my son Frederick William die without issue male living at the time of his death, to them, and their heirs forever. And should my son Hyder
62 Alli Davie have issue male living at his death, and such issue male shall die, without leaving issue male, living at his death, then in that case, I give and devise the said lands and real estate, so described and devised above, should they so have vested, under the above contingencies, in such issue male, to the eldest issue male then living of my son Allen Jones Davie, being of his sons living at my death, to him his heirs and assigns forever."

Your orator further shows unto your honors that the incumbrances mentioned in the above clause, to which the devise was to be subject, are explained elsewhere in the will to mean that the lands were not to pass into the possession of the devisee until the debts and legacies should be paid.

Your orator further shows unto your honors that the plantation at Landsford, on the Catawba river, owned and cultivated by General William R. Davie, the testator, in his lifetime and at the time of his death, containing about three thousand acres, passed under the above-recited clause of the will by which the testator devised and disposed of the rest and residue of his lands and real estate.

Your orator further shows unto your honors that Frederick William Davie, to whom the real estate of the said testator is first
63 devised by the said clause of the will, departed this life on the ninth day of April, anno Domini one thousand eight hundred and fifty, leaving no issue alive at the time of his death. His only child, William Octavian, born on the — day of ——, in the year of our Lord one thousand eight hundred and twenty-two, departed this life at an immature age, having not then attained his tenth year.

Your orator further shews unto your honors that Hyder A. Davie, to whom the said real estate was devised upon the death of his brother, Frederick William Davie, without leaving male issue, departed this life on the thirteenth day of June, in the year of our Lord (1848) one thousand eight hundred and forty-eight; that he had no son living at the time of his death, but left a daughter, Julia, him surviving, who some years before his death had intermarried with Richard S. Bedon; that the male issue of that marriage were Josiah Bedon, Hyder Davie Bedon, William Zelunski Bedon, and Archibald Stobo Bedon, all which grandsons of the said Hyder A. Davie were living at the time of his death, except Archibald Stobo, the last, who was born afterwards, and also at the death of Frederick William Davie, and are yet living.

64 And your orator further shews unto your honors that at the period of the death of Frederick William Davie there was living a son of Allen Jones Davie, to wit, William Richardson Davie, being the eldest of the male issue of the said Allen Jones Davie; that by the last will and testament of Frederick William Davie, whereof a copy is herewith filed, marked Exhibit "B," your orator and William Davie De Saussure are appointed his executors, and that your orator, Frederick G. Fraser, hath alone qualified thereon; that soon after the death of the testator of your orator William Richardson Davie claimed the plantation at Landsford under the will of his grandfather, General William R. Davie, insisting that as the eldest son of Allen Jones Davie he was entitled, under the said will, to all the real estate of General William R. Davie, the said Frederick William having died without leaving male issue, and insisting also that Hyder A. Davie had died without issue male, and which your orator then supposed was true; that thereupon your said orator, finding that the remaining lands of his testator were entirely made greater to employ the large slave force left by him and having no reason to doubt the claim thus set up by the said William Richardson Davie, leased from him the said planta-
65 tion at Landsford for ten years at an annual rent of fifty bales of cotton, to weigh four hundred pounds each, and, as executor, your orator gave him his obligation therefor, copies of which lease and obligation are herewith filed as Exhibit- "C" and "D," to which your orator respectfully craves reference.

And your orator further shews unto your honors that the contract for the lease of the said lands was made under the entire conviction that as Hyder A. Davie died without any sons living at the time of his death the plantation at Landsford went over to William Richardson Davie, the defendant, as the eldest male issue of Allen Jones Davie living at the death of Frederick William Davie; but your orator is advised that this is an erroneous construction of the will of General William R. Davie; that the contract of your orator with William Richardson Davie has been made under a mistake, and that he had no right to lease the plantation at Landsford to your orator for ten years or for any length of time whatever; that by the terms of the devise of the said lands the same, upon the death of Frederick William Davie without male issue, pass to the heirs of Hyder A. Davie, who left male issue, to wit, his grandsons, the sons of his daughter, Julia A. Bedon, alive at the
66 time of his death, and this construction is not affected by the fact that Hyder A. Davie was not alive at the death of Frederick William Davie, but had died before him—that is to say, that the title of Hyder A. Davie and his heirs was contingent only upon the death of Frederick William Davie without issue male, and could only be defeated by the death of the said Hyder A. Davie without leaving issue male (whether children or grandchildren) living at the time of his death, and did in no manner depend upon the contingency of his surviving Frederick William Davie.

And your orator further shews unto your honors that the received opinion in the family of General William R. Davie long

before the death of Frederick William Davie was that William Richardson Davie, the eldest issue male of Allen Jones Davie, would, under the devise aforesaid, be entitled to the lands aforesaid at the death of his uncle, Frederick William Davie, without leaving issue male; that your orator himself was of that opinion, and that the said William R. Davie claimed the lands under that belief.

Your orator has been informed and believes that his testator, Frederick William Davie, always regarded William Rich-
67 ardson Davie as entitled to the lands in the event of his own death without issue male, and shortly before his own death wrote to the said William R. Davie, then a resident of Alabama, to come to this State in order that he might make some arrangements with him in relation to the said lands, feeling that the continuance of his own life was very precarious and uncertain; that William R. Davie did accordingly, in compliance with the wish of his uncle, make a journey to Carolina, but did not arrive till after his death. Your orator is advised that either the heir general of Hyder A. Davie, to wit, Mrs. Julia A. Bedon, his only child, or his grandsons hereinbefore named, the children of Mrs. Julia A. Bedon living at his death, are the parties entitled to the said lands under the will of General William R. Davie, and your orator prays that they may be made parties to this suit as having an interest in the question involved in the construction of the said will.

Amendment A.

And your orator further sheweth unto your honors that even if upon the true construction of the will of Gen'l William R. Davie it shall appear to your honors that neither Mrs. Julia A. Bedon nor her children are entitled to the limitations thereof
68 to the real estate of the testator, but that the same is vested in Dr. William R. Davie, yet your orator is advised that he committed an error in assuming as he did that the said remaindermans was entitled to the immediate possession thereof, insomuch as Frederick William Davie departed this life after the first day of March, 1850, to wit, in April, 1850, and after the crop was pitched and the land had been planted by him. Your orator is advised that by the law of the land he is entitled, as the representative of the said F. W. Davie, to retain possession of the plantation and to make and complete the crop thereon, and that the proceeds of the said crop are assets in his hands for the payment of the debts of his testator, and that the estate of his testator is in nowise bound to pay rent for the use of the said land for the residue of the year in which he died to the remainderman. Your orator submits that the mistake into which he fell in this regard should not be permitted to prejudice the estate of his testator, but that the same should be corrected and the lease reformed, so that no rent should be required to be paid for the use and occupation of the said land during the year in which the testator died, the stipulation to pay rent for that
69 year having been made by your orator under a total misapprehension and mistake of your orator as to the rights of

his testator's estate under the act of assembly in that regard made and provided. Your orator further shows unto your honors that since the filing of his bill in this honorable court the said William R. Davie, under pretence that he is entitled to rent for the said lands for the year 1850, and that the same was in arrears and unpaid on the — day of January, A. D. one thousand eight hundred and fifty-one, placed in the hands of the sheriff of Chester district, John Dunevant, Esquire, a distress warrant, with orders to destrain upon the goods on the said plantation for the rent alleged to be in arrear as aforesaid and due to him; that the said sheriff, under colors of the said distress warrant, thereupon seized and distrained upon fourteen bales of cotton and eighteen hundred bushels of corn of the estate of your orator's testator found upon said land, and threatens to sell the same for payment of the said rent, all of which is contrary to equity and good conscience and the law of the land, inasmuch as the said William R. Davie is not entitled to the said rent and the estate of your orator's testator being entitled to the use of the said land during the year in which he died without paying rent therefor, or if not so entitled yet the said William R. Davie hath no claims to the said lands or rent therefor, but, as your orator is advised, the same vest in Mrs. Julia A. Bedon or her issue male.

70

Wherefore your orator prays that the said William R. Davie and his agents be enjoined from prosecuting the said distress for rent or in any other manner proceeding to collect the same for the past or any future year until further order made by your honors in that behalf, and that meanwhile the said cotton and corn be delivered up to your orator to be disposed of in payment of the debts of the estate.

And your orator further showeth unto your honors that an action of trespass to try title has been instituted against your orator by Lewis A. Beckham and William F. De Saussure for the plantation at Landsford aforesaid, the said plaintiffs claiming that as surviving trustees for Mrs. Julia A. Bedon, the devisee of Mr. H. A. Davie, who was remainderman, as they allege, under the will of Gen'l W. R. Davie, they are entitled to the said lands, and that Dr. William R. Davie, his grandson, is not entitled to claim the same under the said will, and of course had no title to the said lands nor authority to lease the same to your orator, which suit is now depending in the court of common pleas for the district of Chester, and the said plaintiffs threaten to turn your orator out of possession of the said land; and your orator files herewith a copy of the will of the said Hyder A. Davie, marked Exhibit "E."

71

And your orator well hoped that the said William Richardson Davie would consent that the contract for the rent of the plantation at Landsford for ten years should be rescinded, and that the same should be given up to be cancelled and your orator altogether discharged and relieved from his said obligation; but now so it is, may it please your honors, the said William Richardson Davie altogether refuses to consent that the said contract should — rescinded, or to give up the same to be cancelled, insisting that by the will of his

grandfather, General W. R. Davie, he is rightfully entitled to the said lands and had good right to grant the said lease, whereas your orator is advised that the contrary thereof is true, and that the said William Richardson Davie had no power to assure to him the said lands, but that your orator is subject to be evicted therefrom by the heirs of the said Hyder A. Davie.

In tender consideration whereof, and forasmuch as your ora-
72 tor cannot obtain except in this honorable court a decree in judgment by which the said contract shall be rescinded and the defendant William R. Davie required to deliver up the same to be cancelled, to the end, therefore, that the said William Richardson Davie, Julia A. Bedon, and Richard S. Bedon, her husband; Josiah Bedon, Hyder Davie Bedon, and William Zilinski Bedon, children of the said Julia A. Bedon, may full, true, and perfect answer make to all and singular the premises; that if your honors shall be of opinion that the said William Richardson Davie is not entitled to the said lands under the will of his grandfather, General William R. Davie, that your orator's contract with him for the lease of the said lands may be rescinded and declared void, and that your honors may decree that the same be given up to be cancelled, or if your honors shall be of opinion that the said William Richardson Davie is entitled to the said lands under the will of his grandfather, but that his right of possession did not *occur* until the end of the year in which your orator's testator, Frederick William Davie, died, then the same William R. Davie be restrained by injunction from this honorable court from proceeding to collect rent from your orator for the year in which the said F. W. Davie died, either by distress warrant or any other means, and that the cotton and corn destrained upon be delivered up to your orator to
73 be disposed of in payment of the debts of the estate, and that your orator may have such further and other relief in the premises as to your honors may seem meet and consistent with equity and good conscience.

May it please your honors to grant unto your orator a writ of subpœna, to be addressed to the said William Richardson Davie, Richard S. Bedon, Julia A. Bedon, Josiah Bedon, Hyder D. Bedon, and William Zilinski Bedon, requiring them to be and appear in this honorable court before your honors to answer the premises and, further, to stand and abide by such order and decree therein as to your honors may seem meet.

(Sig.) DE SAUSSURE,
Compl't's Sol.

SOUTH CAROLINA DISTRICT:

Personally appeared Frederick G. Fraser and made oath that the matters and things set forth in this answer are just and true so far as they are stated as of his own knowledge, and so far as they are stated as from the information of others he believes them to be true.

FRED'K G. FRASER.

Sworn to before me this 8th day of March, anno Domini 1851.
[L. S.] (Sig.) THOS. M. WILLIAMS, *Magtr.*

74 STATE OF SOUTH CAROLINA, }
Richland County. }

I, D. B. Miller, clerk of the circuit court for said county, do certify that the foregoing thirteen pages contain a true copy of a certain bill in equity, wherein Fred'k G. Fraser, ex'or, is complainant and William R. Davie and Julia A. Bedon *et al.* are defendants, taken from the original thereof on file and of record in this office.

Seal of Court. Given under my hand and official seal this 23rd day of January, 1873.

(Sig.) D. B. MILLER, *C. C. C.*

Endorsements on back of bill:

On motion of De Saussure, compl't's sol., it is ordered that this bill be taken *pro confesso* against the defendants. 2nd June, 1851. (Sig.) A. H. Porcher, C. E. R. D. In equity. Richland district. Fred'k G. Fraser, ex'or of F. W. Davie, *vs.* William R. Davie, Julia A. Bedon, *et al.* Bill. In evidence. (Sig.) G. S. B. 4th Aug., 1873. De Saussure, compl't's sol. Filed 28th June, 1850, with Exhibits A, B. A. H. Porcher, C. E. R. D.

75 FREDERICK G. FRASER } Application for an Injunction, Heard
vs. March 18th, 1850.
WM. R. DAVIE. }

JOHNSTON, *Ch.:*

This is an application at chambers for an injunction.

The plaintiff seeks, upon the ground of mistake, to be relieved of a lease which he took from the defendant W. R. Davie of premises described in the pleadings. It is necessary to look into the title to the premises demised in respect to which the mistake, if any, was committed.

General William Richardson Davie at his death on the fifth of November, 1820, left a last will and testament, which had been duly executed on the seventeenth day of September, 1819. After numerous bequests and devises residuary clauses were inserted in the following terms:

"I give and devise all the rest and residue of my lands, and real estate in the State of South Carolina, to my son Frederick William Davie to him, and his heirs forever. And it is my will and I do hereby devise that in the case of the death of my said son Frederick William Davie, without issue male living at the time of his death, then in that case, I give and devise the lands and real estate (so devised as above, to the said Frederick W. D.) to his brother
76 Hyder Alli Davie, to *to* him, and to his heirs forever. And in case the said Hyder Alli Davie shall die without issue male living at the time of his death then, in that case I give and devise the said lands, and real estate to the eldest issue male of my son

Allen Jones Davie, then living when such event shall take place, that is of the sons he may have living at my death, to him and his heirs forever. And should my son Frederick William have issue male, and such issue male of my son Frederick William should, or shall die without issue male living at the time of his death then in that case, it is my will and I do devise the said real estate (so devised and described above) first to my son Hyder Alli, and his heirs, and then to the eldest issue male living at the time of Allen Jones Davie under the same limitations, and on the same contingencies, and in the same order, and manner as above directed, and devised (should my son Frederick Wm. die without issue male living at the time of his death) to them and their heirs forever." And should my son Hyder Alli have issue male living at the time of his death, and such issue male shall die, without leaving issue male living at his death, then in that case I give and devise the said lands, and
77 real estate, so devised, and described above, should they so have vested, under the above contingencies in such issue male, to the eldest male then living of my son Allen Jones Davie, being of his sons living at my death, to him his heirs and assigns forever."

These residuary dispositions embrace a valuable estate, containing upwards of three thousand acres, called Landsford, the residence of the testator, on the Catawba river.

Frederick William Davie, to whom the same was devised in the first instance, died without issue the ninth of April, 1850, being at the time in possession of the premises upon which a crop was then set, and leaving a will, of which the plaintiff is executor.

Hyder Alli Davie had already died (to wit, on the thirteenth day of June, 1848). His only child who survived him was a daughter, Julia, who in her father's lifetime had intermarried with Richard S. Bedon; of this marriage the following male issue were born, to wit, Josiah Bedon, Hyder Davie Bedon, William Z. Bedon, and Archibald Stobo Bedon, all of whom are now living. The three first of them were born in the lifetime of their grandfather, Hyder Alli Davie; the last was born after his death but before the death of Frederick William Davie.

78 The eldest male issue of Allen Jones Davie living at the death of Frederick William Davie and Hyder Allie Davie respectively was the defendant William R. Davie, a son of the said Allen Jones Davie, and was born before the death of the testator, General Davie.

Upon the death of Frederick Wm. Davie this defendant claimed the Landsford estate, and the plaintiff, under a construction which he put upon the will of the testator (under what he alleges in his bill to have been a mistake), agreed, as executor of Frederick William Davie, to lease the premises for ten years at a yearly rent of twenty thousand pounds of ginned cotton, taking date from the execution of the lease, which bears date the twenty-ninth day of April, 1850. The plaintiff was afterwards advised that this construction of the will of General Davie under which he leased the premises was erroneous; that, according to the true construction of that will, the fee was devised in the first instance to Frederick Wm.

Davie upon condition that it pass over to Hyder Alli Davie if Frederick William should die without living male issue; that, that contingency having happened, the fee vested in Hyder Alli, and upon his death became subject to the provisions of his will,
79 by which his estate was settled in trustees for the sole and separate use of Mrs. Bedon (his only child); that by the terms of Gen'l Davie's will this fee thus vested in Hyder Alli was not to be divested nor pass to the defendant Wm. R. Davie except upon the contingency that Hyder Alli left no male issue, and that inasmuch as at his death he left at least three grandsons, children of his daughter, Mrs. Bedon, that condition never happened, and so William R. Davie never acquired any title to the land and had no right to demise it. He was, moreover, instructed that, even if the title accrued to the said defendant at common law upon the death of Frederick Wm. Davie, the effect of the statute of 1789 was to postpone it until the end of the year 1850, Frederick Wm. having died after the first of March in that year after having set a crop on the land, and that the agreement to pay rent for the residue of that year was without proper consideration to support it and therefore not obligatory. Upon this advice the plaintiff refused to carry out the lease, and the rent of 1850 having accrued the defendant William R. Davie distrained for it. The plaintiff replevied, and now files his bill to be relieved of his contract and to enjoin the collection of rent.

80 The trustees of Mrs. Bedon have also brought their action against the plaintiff in possession to recover the land, and this is also one of the grounds of the bill to which Mrs. Bedon and her trustees, as well as William R. Davie, are made parties. The application now before me is heard upon the bill alone, and I am therefore to assume, as fully as if I had evidence of the fact, that if the construction of Gen'l Davie's will under which the lease was executed was erroneous the error arose from mistake. The principal inquiry is whether it was erroneous. The next, whether, if erroneous, the mistake which led to the error is a ground of relief under the circumstances of the case. There is no doubt the fee was vested by the express terms of the will in Frederick Wm. Davie. He left no male issue in any sense of that term (no male descendants, proximate or remote), and therefore the contingency upon which his estate was to determine and pass over secured upon his death. Upon that event it would have vested, according to the terms of the will, in Hyder Alli Davie if he had been then living, and the provisions of his will would have applied to it. According to the late case of Buist *vs.* Danes the only effect of his predecease was to confer the fee upon those who were his heirs general at the time of his death—that is, upon Mrs. Bedon, who was his only heir.
81 Whatever doubt may be suggested as to the correctness of that decision, I am bound to follow it here; nor is it necessary in this case to determine whether taking under the description of heir Mrs. Bedon took as a purchaser and independently of her father's will or as heir through him in such a sense as to imply in him a power of disposition to such an extent as would warrant the

application of his will to the subject. It is enough to say that, the land having been given (upon a contingency which has happened) to Hyder Alli and his heirs, there can be no reverter to the grantor so long — there is no failure of heirs of the grantee, and the estate must remain with him and his heirs unless some condition accompanying the gift of it has occurred by which it was to become divested. The condition expressed in this will is that in case Hyder Allie Davie shall die without issue male living at the time of his death, then the land shall go to the eldest issue male of Allen Jones Davie, &c., giving a description to which, no doubt, the defendant William R. Davie answers. The only question, then, is whether Hyder Alli Davie left issue male at his death in the true meaning of the terms as employed in this will. No doubt the general meaning of issue is lineal descendant of every degree of remoteness, and that all lineal male descendants are embraced within the terms issue male; and, if there is nothing in the context of
82 this will leading to a different construction, the existence of Mrs. Bedon's sons at the death of their grandfather, H. A. Davie, though they were his remote and not his immediate issue, and though they were issue in the female and not in the male line, negatived the condition of his dying without surviving male issue, and prevented the estate from going over; but, while it is true that such is the general and natural meaning of the terms issue or male issue, that meaning may, as I have intimated, be deflected.

Thus if a testator annex words of explanation shewing that he uses the terms in a special sense they must be construed in the sense intended by him. He translates his own language, as has been well said, and effect must be given to his meaning as explained by himself. Examples of this are found in those cases in which testators have employed the words issue and children synonimously, in which cases the word issue has been restricted to mean children, or, on the other hand, the word children enlarged to embrace issue generally, according to the intention manifested. In some instances resort has been had to other and even disconnected parts of the will to ascertain the true intention. In one of these cases Lord Chancellor Sugden said it was a well-settled rule of construction, and one to which from its soundness he should always strictly adhere, never to put a different construction on the same word when it oc-
83 curred twice or oftener in the same instrument unless there appear a clear intention to the contrary. Though this proposition has been admitted to be generally sound, and with proper qualifications may be so, it does not, as has been remarked by Mr. Jarman, dispose of the difficulties attending these cases, for the question still is, what amounts to "a clear intention to the contrary," so as to take a given case out of general rule, a point upon which different minds will very probably draw different conclusions. Besides, the proposition as laid down does not necessarily mean, as Mr. Jarman in his note upon the case seems to apprehend, that when a term or phrase occurring several times in an instrument is defined in one instance and not in the others the definition shall be extended to the instances where it is omitted, whether the definition was

clearly intended to be general and to apply to the instrument throughout or not. The proposition may mean directly the contrary: that where the words stand in a context supposed to so explain or define them as to impart to them a special meaning, that meaning shall not, without strong necessity, be attributed to them there in opposition to their significance in other parts of the instrument when they occur without that context; but whatever may be thought of the proposition of Lord Chancellor Sugden and whatever may be thought of the remedy proposed by
84 Mr. Jarman in his note by way of obviating a latitudinarian construction as to what amount to a clear intention to the contrary and whatever may be thought of another method of interpretation in doubtful cases which has sometimes been resorted to (viz.), to look to the will for the purpose of ascertaining what operation the testator has ascribed to the words he has employed—what effects he supposes they are fitted to produce or must produce—whatever may be thought of any or all of these methods, all the cases show and common reason dictates that the context may and must have an influence in the construction of testamentary papers. That influence will be more or less controlling according to the degree of evidence it bears as to the true meaning. In some cases set phrases occur and the influence they are to have in the construction may be reduced to rule. In other special instances room may exist for a rule, but so infinitely varying are contexts that in very few instances can any rule apply beyond the general one—that words and phrases shall be construed in their obvious and natural sense unless there is enough somewhere in the context to convince a sound mind that they were intended differently. When the context produces that conviction and to the extent that it produces it, it must
85 govern. This general rule applies not only to wills but to every other instrument by which individuals or societies of men undertake to communicate their thoughts or express their intentions or embody their contracts or agreements or enactments, whatever their nature may be. I do not pause to adduce and comment on the cases. They are collected by Mr. Jarman in his second volume on Wills, chap. 29, dives. 2, section 4, pp. 353–361.

I proceed immediately to the will before me. The scheme of this will is peculiar. In no instances has the testator given any portion of his real estate to his daughters or their issue, male or female. The whole of it is given to males. It is first given to his son Frederick William in fee simple. Upon a contingency, that estate is to determine and the fee is to pass to his son Hyder Alli. Upon a contingency nearly similar, that estate is to cease; but then the fee is to pass not to his other son, Allen Jones, but, passing him by, is to vest in his eldest issue male of a special description. The contingency upon which the estate is to pass from Frederick William to Hyder Alli *are* twice described: First, if Frederick William shall leave no issue male, and, second, if he shall leave neither issue male nor male issue of that issue living at his (Frederick William's) death; but observe, nothing is given to this issue or their
86 issue if they should survive Frederick William. In that case

his fee is simply confirmed in him. The contingency upon which the estate is to pass from Hyder Alli is also twice described: First, if he shall leave no issue male living at his death; second, if he shall have issue male and the estate shall be vested in that issue and that issue should afterwards die leaving at his (the issue's) death no male issue of his own. In either of these events the estate is to go over to its ultimate destination; and what is that destination? The eldest male issue of Allen Jones then living "of his sons" or "being of his sons" who were *in esse* at the testator's death. But amid all these dispositions there is no gift to any of the issue of his sons except to those of Allen Jones. The fee is constantly given, but ever limited—first to Frederick William, then limited over to Hyder Alli, and then to special issue of Allen Jones. It was to pass from Frederick William only in case he left no male issue nor issue male of that issue. If survived by either, his estate was established in him with the most unlimited power of disposition; nevertheless there is no suggestion of the estate's resting in his issue of either or any class.

Though Hyder Alli should leave male issue, notwith-
87 standing it is suggested that that issue might get the estate, yet it should be defeated unless the issue should be survived by male issue of its own; in which case it was to go to the issue of Allen Jones, to whom the testator neither imparted any of the estate nor any power of disposition over it. Now, if General Davie had been asked why he made dispositions so singular and so whimsical and incongruous as these at first appear to be, might he not have explained himself in some such way as this: I have certain sentiments upon the subject of landed property leading me to give it to the families of my sons and to withhold it from my daughters. Where I give it to either of my sons themselves I think it proper to invest them with such a power of disposition over it as their exigencies may require, and although I have made the existence of male issue at their death a bar to the estate's passing away from them I have given nothing to the issue, leaving the whole estate in the power of my sons with a view to secure to them the dependence and consequent obedience of their children. By the description I have given of the persons whose existence is to prevent the estate from passing over I have indicated a wish that my sons
88 should, in the exercise of their power, by testamentary disposition or otherwise vest it in them if their own circumstances or the conduct of those persons may, in their judgment, warrant it; but for reasons which exist in my own mind I had imparted a more effectual power to my sons in some instances than in others, and in one instance I have purposely withheld all power. Frederick, though a boy, I constitute the head of my family. In my will is a clause in which I commit to his care and protection his unmarried sisters, and I am willing to give him the unlimited disposition of the property I devise to him.

As head of the family I give him as large a power as I, the present head of it, possess. If he does not dispose of the property in his lifetime, but leaves male issue or their male issue, and should de-

vise it to them out and out, unconditionally and forever, I wish him to understand that I am content. Not so with Hyder Alli. While I have given him such a power as may answer all the necessities under which he may happen to fall and as may secure the subordination of his male issue, I have indicated to him my wish that he should give them the property; but still it is not my wish, should he do so, that they shall have it out and out, as in the former
89 case. Though he gives it to them, my desire is that in case of failure of male issue on their part the estate shall come back again into my male line. In considering the ultimate limitations over by which that is to be effected I have been governed by these considerations: I have reasons for not giving the property or any disposition over it to my son Allen Jones. I must therefore, with my sentiments, substitute his male issue in his place. With his present family I am satisfied. His sons I know and love, and if he should have others during my life (by his present or any future marriage) with whom I shall not be pleased, or if his existing sons should all die, my will is still revocable and I can alter it. Under these circumstances and possessing this power of revocation I have ventured to lodge the ultimate limitations in the eldest male issue of Allen Jones who may be living when the estate shall fall in, provided it include or descend from those of his sons whom I may have an opportunity to know and observe. I have therefore employed the terms of "eldest male issue of Allen," consisting "of his sons" or "being issue of his sons," whom I have described.

Would not these reasons have explained the whole will? If they would (and I think they do), they furnish an interpretation
90 which harmonizes every part of the instrument, and such an exposition is constantly preferred by all the authorities to construction of the different parts considered separately from each other. I look upon it that this general view accounts for every part of the will and, without perverting its natural meaning in any part, reconciles the whole. If we dismiss this general view and (dividing the will) examine its several parts, still I conceive the result must be the same.

1. We shall find, I think, that when the testator employs the term issue as a bar to the estates passing over (which is the most material point here) he means immediate issue only, and when he wishes to enlarge the bar by extending it to embrace remote issue also he uses the terms issue of issue as contradistinguished from this immediate issue.

2. That if, notwithstanding this careful distinction, we were still bound to include remote lineal descendants under the general term issue we should not be at liberty to embrace within the term even male descendants through a female line, seeing that a contrary intention constantly is expressed in the direction that the bar is to consist of male issue of male issue, an unbroken chain of males.

3. That in those parts of the will where the testator em-
91 ploys the word issue or issue male, not by way of describing a bar to prevent the determination of a preceding estate, but as a description of the persons to whom he intends to limit over the

property, the primary meaning which he attaches to the words is that of immediate descendants or immediate male descendants, and that when, on the one hand, he desires to limit his devise to specific persons among the immediate descendants, instead of leaving it open to all of them, or where, on the other hand, his object is to render it transmissible to their issue he deems it necessary to make use of additional words, not by way of defining the terms issue male, as was supposed in the argument, but assuming them to mean immediate male issue, to restrict their primary range and superadd another class to it consisting of other issue.

1. The first of these three propositions is conspicuously illustrated in the devise to Frederick William Davie. In the first instance it was provided that his estate should not determine and go over if he left male issue living at his death. Why, then, did the testator deem it necessary to make the provision subsequently that the estate should not pass if he left issue of that issue? Can we
92 account for this secondary provision consistently with the assumption that the testator supposed or intended that the issue of issue was included in the general term of issue, or that he was conscious of having used the latter term in a sense that would admit of it? In the case of Hyder Alli it is true that these questions cannot be asked with the same degree of propriety. The testator in that instance was contemplating a contingency like the following, to wit, that Hyder Alli might be survived by male issue and might have vested the estate in them, in which event the chances of the limitations over to Allen Jones' issue might be forever defeated. This the testator desired to avert, and therefore, to render the chances of the ultimate limitations, he provided that that limitation should revise if Hyder Alli's issue (who had once defeated it) should eventually die issueless. This provision, therefore, cannot be affirmed to be purposeless, as the secondary provision in the case of Frederick William was. But still the discrimination was made here, as there, between issue and the issue of issue, and there is something in the terms in which the issue are spoken of indescribably fitted to persuade the mind that by that term immediate
93 issue was intended. I cannot analyze the impression produced, but it seems to consist in the individualized and impersonated form in which they presented themselves to the testator's view, "if the issue shall die without leaving issue at his death." Is this the light in which remote issue would be likely to exhibit themselves to his eyes or be spoken of?

2. As to the second proposition, to wit, that though obliged to let in remote male descendants under the general terms male issue as a bar to the ultimate limitation, yet such descendants were not intended to include any that might arise in the female line. I think the mere reading of the will shows that. Issue male and the male issue of such issue is the continual theme of the will. If Hyder Alli had left only Mrs. Bedon, it is confessed and could not have been denied that the testator intended to take the estate from her. Is it a natural conclusion that her children could have stood higher in his favor than herself; that he would give to the children what

he denied to the parent? Is it a natural conclusion that he who had sedulously abstained from every provision by which in any contingency even the male issue of his own daughters might
94 take any portion of his lands at the same time harboured an intention more favourable to the same description of issue of his granddaughters? It appears to me unreasonable and incredible.

3. I have said that where the testator uses the term male issue without more he intends immediate issue exclusively, not only where he is describing a bar but where he is giving an estate. I refer now to the ultimate disposition of his real estate. The argument of the defendants' counsel proceeded upon an idea different from that which I entertain. I do not think the testator, when speaking of the eldest male issue of Allen Jones, employed the further words "that is of his sons" and "being of his sons" living at the falling in of the estate and also at the testator's death. I do not think he superadded these words by way of definition, as if he had said by male issue I mean sons. If his object had been to define, it would still deserve to be considered to what extent he intended his definition to spread or to apply. Did he intend it for all parts of the will or only for the particular clause in which it occurs? There or everywhere? I could not hold with satisfaction that a definition or even an explanation occurring in a particular place of words or phrases which happen to be employed there must be extended to all other places throughout the instrument,
95 wherever they may be used. If that is Lord Chancellor Sugden's position, I do not think it is either sound or has been well established as a rule. No communication that ever proceeded from the lips or pen of man, however deliberate or well considered, could stand such a rule—not though it were moved by inspiration. Not even the holy oracles, intended and accepted as the infallible rule of faith and practice and as a sufficient guide for both in all cases; not only the different books, though protected by a common and infallible inspiration, but the same book, proceeding from the same author, being couched in human language, bestrays in numberless instances that want of uniform precision which must necessarily arise from the infirmity of the vehicle employed. The same word is used by the same inspired writer in different senses, and though confirmed by the definition or compressed by the context in one place, it has a different meaning in another; and yet a real uniformity reigns throughout and lends the stamp of truth to the whole and every part. An immediate context may have a limit, and in fairness should not be extended to the interpretations of words or phrases capable of various meanings wherever they occur in distant parts of an instrument merely because defined or ex-
96 explained in a particular place. The question always is as to the extent to which the explanation is *is* intended to apply. But though the words to which I have alluded in the limitation over were not used by way of defining or explaining what the testator intended by issue male, they are the more efficacious precisely on that account. They betray evidence, without any design to communicate it, of the fact which we are concerned to ascertain,

and this has been pronounced by an elegant and philosophical writer who has proved his ability to investigate such subjects by the best specimens of the analysis of circumstantial evidence, Paley's Hone Pauline, that I know of to be the most convincing of all kinds of testimony. The words to which I have referred were, in my view, introduced not for the purpose of showing that by male issue of Allen Jones his immediate male issue or sons were intended, but with the design of limiting the intended bounty to a part of them, this evidently but undesignedly manifesting the fact that in the testator's conception the words issue male, applied only to sons and without the restricting words, would have embraced all the sons. At the same time the testator, without impugning the idea that Allen's issue meant his sons, managed by a contrivance of language somewhat singular, perhaps obscure, in which the
97 monosyllable "of" appears the most efficacious, to extend the word issue to the issue of the selected sons also. I have done with this subject. I do not think that the existence of Mrs. Bedon's male children at Hyder Alli's death was sufficient to prevent the estate from going over. If it were otherwise and I was obliged to investigate the question whether in this case the error could be relieved against — upon the ground of mistake I should have much difficulty on that subject arising from the cases of Whitworth *vs.* Stuckey, 1 Rich, Esq., 404, Dan *vs.* Vanlew, and what is said in some other cases, particularly in Mann *vs.* Washington, 3 Strobh, 171. I am, however, relieved by the view I take of the titles from the consideration of that subject and have too little time allowed me to admit of an investigation unless it was absolutely necessary to the decision of the application before me. But supposing the title devolved on Wm. R. Davie upon the death of his uncle, Frederick William, it is still insisted that, inasmuch as that event happened after the first of March, the plaintiff, as executor of the decedent, was entitled to the possession of the land to the end of the year without making compensation for the use, and therefore is not bound to pay rent for the residue of that year according to the lease. I have always thought that the statute was misconstrued in Leverett *vs.* Leverett, and have somewhere, perhaps
98 in Freeman *vs.* Tompkins, freely expressed that opinion, but Leverett *vs.* Leverett was decided nearly thirty years ago and has never been reversed, and I should not venture to depart from it in a circuit decision. So far I am with the plaintiff; but then this is a case of a tenant's objecting to his landlord's title, a subject of great difficulty, as may be seen in Leonard *vs.* McCool. The plaintiff is in possession. Though it be said he did not obtain the possession under the lease, but already had it under the statute, it may be replied, That is true in a certain sense. It was true before the lease was executed, but the lease was an acknowledgment of title in the lessor, and the possession taken or retained was thenceforward his possession. The plaintiff has possession now after the expiration of the period allowed by the statute, and the lease authorizes him to retain it for nine years longer. This is a possession under the lease which covers the whole time as an unity. The lease sanctifies this

possession and protects the lessee from being turned out by the lessor; and shall the lease, which is in this respect conclusive against the lessor, be inconclusive where it makes in his favor? If the lessee had been ousted by a third party after the execution of the lease the landlord was bound to defend him from loss. Fealty and
99 protection are correlative and neither party can excuse himself from the duties incumbent on him, while the other party is still bound to perform corresponding duties to him. It is ordered that the application be discharged.

J. JOHNSTON.

(This is necessarily a hasty opinion, and I would desire that the opinion of the appeal court be taken.)

J. J.

STATE OF SOUTH CAROLINA, }
Richland County. }

I, D. B. Miller, clerk of the circuit court for said county, do certify that the foregoing 22 pages contain a true copy of the decree in the case of Fred. G. Fraser, ex'or, *vs.* Wm. R. Davie *et al.*, taken from the original thereof on file in this office.

Given under my hand and official seal this 23rd day of January, 1873.

[SEAL OF COURT.] (Sig.) D. B. MILLER, *C. C. D.*

Endorsements on back:

Fraser *vs.* Davie. Decree of March, 1851. In evidence. G. S. B., J. 4th Aug., 1873.

100 William R. Davie }
to
F. G. Fraser, Ex'r. }

SOUTH CAROLINA, }
Chester District. }

Know all men by these presents that I, William R. Davie, of Coosa county, State of Alabama, in consideration of the sum of twenty thousand pounds ginned cotton, to be delivered at the gin-house annually on the first day of January in each year, have bargained, leased, or rented to F. G. Fraser, ex'r of the last will and testament of F. W. Davie, late deceased, the plantation whereon the said F. W. Davie (dec'd) lived, which said lands under the will of the late W. R. Davie (dec'd), of the district of Chester, State of South Carolina, *is* now the right of the said W. R. Davie, of Coosa, Alabama. Under the limitations in said will the conditions of the said lease are that the said G. F. Fraser, ex'r, shall take care of the lands in farming, so as to save the same, and is at liberty to clear fresh lands, but is at the same time to leave sufficient timber on the several parts thereof to keep it up. The said lease is to continue for the term of ten years, and at the end of that time to continue if the said executor so wishes, he punctually paying the rents.

In testimony whereof I have hereunto set my hand and seal this 29th day of April, in the year of our Lord one thousand eight hundred and fifty.

(Sig.) W. R. DAVIE, M. D. [L. S.]

Signed, sealed, and delivered in the presence of—
CHURCHILL B. JONES.
L. A. BECKHAM.

101 STATE OF SOUTH CAROLINA, }
Chester District. }

Personally appeared L. A. Beckham and made oath that he saw W. R. Davie sign, seal, and deliver the within instrument for the use and purpose therein mentioned, and that he, with C. B. Jones, in the presence of each other, witnessed the due execution thereof.

(Sig.) L. A. BECKHAM.

Sworn to and subscribed before me this 29th April, 1850.

(Sig.) D. G. STINSON, *Not. P.*

Recorded May 3rd, 1850.

True copy.

(Sig.) C. C. McCOY, *Clerk*,
P'r W.

SOUTH CAROLINA, }
Chester County. }

I, Charles C. McCoy, clerk of the circuit court for the county of Chester, in the State aforesaid, hereby certify that the foregoing two pages contain a true copy of a certain lease from W. R. Davie to F. G. Fraser, ex'r, recorded in my office, as appears by the book in which the same was registered remaining in my office.

In testimony whereof I have hereunto set my hand and affixed the seal of my office, at Chester, this 16th day of July, A. D. 1873.

[SEAL OF COURT.] (Sig.) C. C. McCOY, *Clerk C. C.*

Endorsements on back of lease:
W. R. Davie to F. G. Fraser, ex'r. Lease. In evidence. (Sig.) G. S. B., J. 4th Aug., '73.

102 *Writ in Case.*

The State of South Carolina to all and singular the sheriff- of the said State, Greeting:

You and each of you are hereby commanded without delay to attach the body of William D. De Saussure, the defendant, wheresoever found within your and each of your respective districts, so that you compel said defendant to be and appear before the associate judges of the said State, at the court of common pleas, to be holden at Chester court-house, in and for the district of Chester, on the first Monday after the fourth Monday in October next, to answer to

Lewis A. Beckham and William F. De Saussure, survivors of Lewis A. Beckham, William F. De Saussure, and Frederick William Davie, trustees under the will of Hyder A. Davie, the plaintiffs, of a plea, wherefore with force and arms he broke and entered the close or plantation of the said plaintiffs, situate at Landsford, on the Catawba river, in the district and State aforesaid, containing three thousand and seventy-six acres, more or less, and them therefrom did eject and hold out and other wrongs and enormities to them then and there did, against the peace of the said State and to the damage of the plaintiffs ten thousand dollars.

And have you then this writ before the clerk of *of* the said court fifteen days next before the sitting of the said court.

103 Witness James S. Guignard, Esq., clerk of the court of common pleas in and for the district of Richland, at Columbia, the ninth day of September, in the year of our Lord one thousand eight hundred and fifty-four, and in the 80th year of the sovereignty and Independence of the United States of America.

(Sig.) DE SAUSSURE,
Plaintiffs' Att'y.

This action is brought as well to try title as for damages.

I acknowledge the legal service of this writ.
(Sig.) W. D. DE SAUSSURE.

104 *Declaration. Tresp's to Try Title.*

SOUTH CAROLINA, }
Chester District, }

William D. De Saussure was attached to answer to Lewis A. Beckham and William T. De Saussure, survivors of Lewis A. Beckham & W. F. De Saussure and Frederick William Davie, trustees under the will of Hyder A. Davie, of a plea wherefore with force and arms and so forth the said defendant broke and entered the close or plantation of the plaintiffs, situate at Landsford, on the Catawba river, in the district of Chester and State aforesaid, and them therefrom did eject and hold out and other wrongs and enormities to them then did, against the peace of the said State and to their damage and, thereupon the plaintiffs, by De Saussure, their att'y, complain for that heretofore, to wit, on the first day of September, 1854, to wit, at Chester court-house, in the district and State aforesaid, the said defendant, with force and arms, and so forth, broke and entered the close or plantation of the plaintiffs, situate on the Catawba river, at Landsford, in the district and State aforesaid, containing three thousand and seventy-six acres, more or less, bounded on the east by the Catawba river and on the other sides by lands held or claimed on or previous to the 17th May, 1813, by the following persons, namely: Bounded on the north by David Patton's land and by Simpson's land, northwest by Richard Paul's
105 land, southwest by lands of Crosset and of Guy, west and northwest by Carter's land, southwest and northwest by lands

of Hyder A. Davie, south and west and north by lands of Walker, and south by Crosset's land, together with the island in the said Catawba river opposite the said plantation, including an island containing fifty acres, more or less, lying and being in the said river opposite the southern end of the said plantation, and the said plaintiff- *for he* did thereupon eject and hold out and other wrongs and enormities then and there did, against the peace of the said State and to the damage of the said plaintiffs ten thousand dollars; and thereupon they bring suit, and so forth.

(Sig.) DE SAUSSURE,
Pl'ffs' Att'y.

And the defendant, by McAlily and his attorn*ies*, comes and defends the force and injury, when and so forth, and says he is not guilty in manner and form as the plaintiffs allege; and of this he puts himself upon the country, and so forth.

(Sig.) McALILY & McCLURE AND GREGG.

And the plaintiffs do likewise.

(Sig.) DE SAUSSURE,
Pl'ffs' Att'y.

106 *Special Verdict.*

LEWIS A. BECKHAM *et al.*
vs.
WILLIAM D. DE SAUSSURE. } Trespass to Try Title.

We find that the plantation at Landsford, the subject of this suit, was the property of Gen'l William Richardson Davie at his death, which occurred on the 5th November, 1820; that Gen'l W. R. Davie devised this plantation as in his will mentioned, dated the 17th September, 1819, which will is made a part of this verdict; that Frederick William Davie, his son, died on the 9th April, 1850, without leaving issue male living at the time of his death; he had a son, but he died before him.

That Hyder A. Davie died on the 13th June, 1848, having no son living at the time of his death, but a daughter Julia him surviving, who before his death had intermarried with Richard S. Bedon; that the issue male of that marriage was Josiah Bedon, Hyder Davie Bedon, William Z. Bedon, and Archibald S. Bedon, all living at the death of Hyder A. Davie and his brother Frederick William Davie, except the last, to wit, Archibald S. Bedon, who was born after the death of Hyder A. Davie. We find that at the death of Frederick Wm. Davie there was living a son of Allen Jones Davie, viz., William Richardson Davie, born in 1816, being the eldest of the
107 issue of Allen J. Davie; which William R. Davie departed this life in 1854, leaving issue.

That after the death of Frederick William Davie, to wit, on the 29th April, 1850, William R. Davie, claiming the said plantation under the limitations contained in the will of General Wm. R. Davie, leased the same to Frederick G. Fraser, ex'or of F. W. Davie, for ten

years for the annual consideration of 20,000 pounds ginned cotton, deliverable at said plantation, and that F. G. Fraser continued in possession, cultivating the same, until his death, on the 1st February, 1852, after which period the defendant, as executor of F. W. Davie under the lease, took and yet holds possession.

That Hyder A. Davie left a will, dated 24th March, 1847, devising his whole estate as therein mentioned; which will is made a part of this verdict.

That William Davie De Saussure was born in December, 1819, of which fact his grandfather, Gen'l W. R. Davie, was aware.

That the family of Gen'l W. R. Davie consisted at his death, and at the date of his will, of the following persons, to wit, his son Allen Jones Davie, who had issue then living, several sons and daughters, the eldest of which sons was William Richardson Davie.

Also Hyder A. Davie, who had but one child, a daughter, born at the date of the will, and then an infant.

108 Also a son, Frederick William Davie, who was his youngest child and unmarried at his death.

Also a daughter, Mary, who was unmarried at the time of his death; also a daughter, Martha Rebecca, who was unmarried at the period of his death.

Also a daughter, Sarah Jones Davie, who prior to his death, viz., in 1815, had intermarried with William F. De Saussure and had issue living at the death of her father as follows: Eliza Gabriella, who since the death of General Davie "intermarried with Dr. Henry K. Burroughs; Sarah Jones, who since the death of her said grandfather intermarried with Alex. Hamilton Boykin, and William Davie De Saussure, the date of whose birth is stated above.

That General Wm. R. Davie was a distinguished lawyer, and had formerly practised for many years in the State of North Carolina.

If upon the facts thus found the court shall be of opinion that the plaintiffs are entitled to the land, then we find for the plaintiffs the land described in the plat made by Charles Boyd, dated 17th May, 1813, and made a part of this verdict, and which lands are designated and contained within the lines indicated on the said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 and the islands opposite and five dollars damages.

109 But if upon the facts found the court shall be of opinion that the plaintiffs have no title to the said lands, then we find for the defendants.

(Sig.) J. H. STROUD, *Foreman.*

LEWIS A. BECKHAM *et al.*
vs.
W. D. DE SAUSSURE. } Judgment.

Judgment signed and entered up 29th day of September, 1856.

(Sig.) W. H. ANDERSON, *C. C. Pl's.*

And now, at this day, to wit, the fourth Monday in October, in the year of our Lord one thousand eight hundred and fifty-five, to

which day the issue aforesaid was continued in the court of common pleas, at Chester court-house aforesaid, came the parties aforesaid, and the sheriff of Chester district, as thereto before commanded, returns that he has summoned fifty-eight good and lawful men to be drawn by ballot, according to the directions of the act of the General Assembly of said State in such case made and provided, to be and appear before the justices of the said State, at the court aforesaid, to be holden at the place and time aforesaid; and afterwards—that is to say, on the day and at the place aforesaid—before the justices aforesaid, came as well the said Lewis A. Beckham and William F. De Saussure, the plaintiffs, by their attorney aforesaid, as the said William Davie De Saussure, the defendant, and by his attorney aforesaid, and the jurors aforesaid, being demanded, some of
110 them, to wit, J. H. Stroud, foreman; J. B. Montgomery, W. M. Brown, Abraham Mayfield, G. G. Robinson, J. L. Ferguson, Tresvan Castles, James Caskey, Thomas Lucas, John McKee, Jr., Coleman Crosby, and James Jamison, came and, being drawn by ballot according to the directions of the act of the General Assembly aforesaid and sworn as the jury aforesaid to say the truth of the within contained, do on their oaths say that the plantation at Landsford, the subject of this suit, was the property of General William Richardson Davie at his death, which occurred on the 5th November, 1820; that General William R. Davie devised this plantation as in his will mentioned, dated the 17th September, 1819, which will is made a part of this verdict; that Frederick William Davie, his son, died on the — day of April, 1850, without leaving issue male living at the time of his death; he had a son, but he died before him.

That Hyder A. Davie died on the 13th June, 1848, having no son living at the time of his death, but a daughter, Julia, him surviving, who before his death had intermarried with Richard S. Bedon; that the issue male of that marriage were Josiah Bedon, Hyder Davie Bedon, Wm. Z. Bedon, and Archibald Stobo Bedon, all living at the death of Hyder A. Davie and his brother, Frederick Wm. Davie, except the last, to wit, Archibald S. Bedon, who was born after
111 the death of Hyder A. Davie; that — the death of Frederick William Davie there was living a son of Allen Jones Davie, viz., William Richardson Davie, born in 1816, being the eldest of the issue of Allen J. Davie, which William R. Davie departed this life in 1854, leaving issue.

That after the death of Frederick Wm. Davie, to wit, on the 29th April, 1850, William R. Davie, claiming the said plantation under the limitations contained in the will of General W. R. Davie, leased the same to Frederick G. Fraser, executor of F. W. Davie, for ten years for the annual consideration of 20,000 pounds of ginned cotton, delivered at said plantation, and that F. G. Fraser continued in possession, cultivating the same, until his death, on the 1st February, 1852, after which period the defendant, as executor of Frederick Wm. Davie under the lease, took and yet holds possession.

Hyder A. Davie left a will, dated 24th March, 1847, devising his whole estate as is therein mentioned, which will is made part of this verdict.

That William Davie De Saussure was born in December, 1819, of which fact his grandfather, General W. R. Davie, was aware; that the family of Gen'l W. R. Davie consisted at his death and at the date of his will of the following persons, to wit: His son, Allen Jones Davie, who had issue then living, several sons and daughters, the eldest of which son- was William Richardson Davie; also Hyder A. Davie, who had but one child, a daughter, born at the date of the
112 will and then an infant; also a son, Frederick W. Davie, who was his youngest child and unmarried at his death; also a daughter, Mary, who was unmarried at the time of his death; also a daughter, Martha Rebecca, who was unmarried at the period of his death; also a daughter, Sarah Jones Davie, who prior to his death, viz., in 1815, had intermarried with William F. De Saussure and had issue living at the time of the death of her father as follows: Eliza Gabriella, who since the death of General Davie intermarried with Dr. Henry K. Burroughs; Sarah Jones, who since the death of her said grandfather intermarried with Alex. Hamilton Boykin, and William Davie De Saussure, the date of whose birth is stated above.

That General Wm. R. Davie was a distinguished lawyer, and had formerly practised for many years in the State of North Carolina.

If upon the facts thus found the court shall be of opinion that the plaintiffs are entitled to the land, then the jury aforesaid find for the plaintiffs the lands described in the plat made by Charles Boyd, dated 17th May, 1813, and made a part of this verdict, and which lands are designated and contained within the lines indicated on said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9. 10, 11, 12, 13, 14, 15, 16, 17, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31 and the islands opposite and five dollars damages.

113 But if upon the facts found the court shall be of opinion that the plaintiffs have no title to the said lands, then the jury aforesaid find for the defendant.

And thereupon, all and singular the premises being seen and by the court now here fully considered, for that it appears to the said court that the said plaintiffs, Lewis A. Beckham and William F. De Saussure, have right and are entitled to the lands and tenements in their declaration aforesaid described and in the said verdict mentioned, therefore it is considered that the said plaintiffs do recover against the said defendants the lands and tenements above mentioned and five dollars for their damages so found by the jurors aforesaid against the said defendant for the trespasses by him committed as in the declaration aforesaid alleged, and also twenty-two dollars and sixty-two and a half cents costs for their costs and charges by the plaintiffs in and about prosecuting their suit in this behalf expended and to them by the court now here with their assent adjudge-, and be the said defendant in mercy, and so forth.

(Sig.) —— DE SAUSSURE, *P'ffs' Att'y.*

114 STATE OF SOUTH CAROLINA, }
Chester County. }

I, C. C. Macoy, clerk of the court of common pleas and general sessions for Chester county, in the State aforesaid, do hereby certify that the writing hereunto annexed, consisting of fourteen pages, doth contain a full and true exemplification had in the court aforesaid in a certain case wherein Lewis A. Beckham *et al.* were plaintiffs and W. D. De Saussure defendant, as appears by the original records remaining in my office.

In testimony whereof I have hereunto set my hand and affixed my seal of office, at Chester, on the 30th day of July, in the year A. D. 1873, and in the 89th year of the sovereignty and Independence of the United States of America.

Seal of Court.

(Sig.) C. C. MACOY, *Clerk C. C.*

STATE OF SOUTH CAROLINA, }
Chester County. }

I, T. J. Mackey, judge of the court of common pleas and general sessions for the sixth circuit of South Carolina, do hereby certify that the above-named Charles C. McCoy is clerk of the court of common pleas and general sessions for said county, and that the
115 attestation hereinabove given to the record above set forth is in due form according to law.

(Sig.) T. J. MACKEY,
Presiding Judge, Sixth Circuit, S. C.

Endorsement on back of declaration:

Lewis A. Beckham *et al. vs.* W. D. De Saussure. Declaration. Trespass to try title. —— De Saussure, pl't'ff-' att'y. Filed in the clerk's office October 22nd, 1855. (Sig.) W. H. Anderson, C. C. C. pl's. In evidence. (Sig.) G. S. B., J. 4th Aug., 1873.

116 SOUTH CAROLINA

I F W Davie of the district of Chester in the State aforesaid do hereby declare this to be my last will and testament

1st. I devise and bequeath to my wife Mary Davie and her heirs forever all the right title and interest which I acquired in her estate real, and personal by virtue of my intermarriage with her

2nd I bequeath to my wife Mary Davie and her heirs forever the following negro slaves to wit Fred and his wife Amy and their four children Charles, William John and Caroline and Harriet and her two children Aaron and January.

3rd I will devise and bequeath all the rest and residue of my estate real and personel to my wife Mary Davie during her natural life; and at her death it is my will that my estate real and personal except two small legacies hereinafter to be mentioned be divided into three equal parts whereof I devise one part to William F De Saussure his heirs executors and administrators forever; one other part I devise to my nephew and niece B Churchill Jones and Sarah Rebecca Fraser, the children of my late sister Rebecca Jones,

to them their heirs executors and administrators forever. And in case of the death of B Churchill Jones without issue alive at the time of his death

I devise his share of the said one other part to his sister Sarah Rebecca Fraser her heirs, executors, and administrators forever.

117 (Something wanting in paper from which copy is made.)

I devise to my nephew and niece William R Crockett and Mary Fraser Davie the daughter — my brother Allen J Davie to them their heirs executors and administrators forever

And in case of the death of the said William R Davie Crockett without issue alive at the time of his death then and in that case I devise his share of the said last mentioned one third part to his brother John Crockett his heirs executors and administrators forever

4th At the death of my wife Mary Davie I bequeath to Isaac Marcrief and his heirs executors and administrators forever the following four negro slaves to wit Bessie and her son John, Avon and her daughter Kizzy

5th At the death of my wife Mary Davie I bequeath to Thomas Whitesides his heirs executors and administrators forever one negro boy named Osceola

I appoint Frederick G Fraser and William D De Saussure executors of this my last will and testament

Witness my hand and seal this eighteenth day of March 1850

(Sig) F W DAVIE [L S]

Signed sealed and published by the testator as and for his last will and testament in our presence, who in his presence and in the presence of each other have subscribed our names as witnesses hereto

(Sig) HENRY J CULP
" R. E WYLIE
" J S PRIDE

118 SOUTH CAROLINA, }
Chester District. }

In the Court of Ordinary.

APRIL 26TH, 1850.

Personally appeared in open court J. S. Pride, who, upon being sworn, saith upon oath that he was present and saw F. W. Davie sign, seal, publish, and declare the within to be and contain his, the said F. W. Davie's, last will and testament, and further saith the said F. W. Davie was then of sound and disposing mind and memory and understanding, to this deponent's knowledge and belief, and further saith that he, this deponent, did sign his name as a witness thereto, with Henry J. Culp and Richard E. Wylie, in the presence of each other, in the presence of the testator, and at his request.

(Sig.) J. S. PRIDE.

Sworn to and signed date above.

(Sig.) PETER WYLIE, *Ord'y.*

April 26th, 1850, Frederick G. Fraser, named executor, appeared in open court and was qualified executor.

(Sig.) PETER WYLIE, *Ord'y.*

April 21st, 1852, Wm. D. De Saussure, named executor, came into open court and was qualified as such.

(Sig.) PETER WYLIE, *Ord'y.*

119 STATE OF SOUTH CAROLINA, }
Chester County. }

PROBATE JUDGE'S OFFICE.

I, Wm. H. Anderson, clerk of the probate court for the county of Chester, in the State aforesaid, do hereby certify that the foregoing three pages contain a true copy of the last will and testament of F. W. Davie, dec'd, as appears from the original now on file in this office.

Seal of Court. Given under my hand and the seal of the office, at Chester court-house, this 24th day of July, 1873.

(Sig.) W. H. ANDERSON,
Clerk Probate Court.

Endorsements on back of will:
Copy of will of Frederick William Davie. In evidence. (Sig.) G. S. B., J. 4th Aug't, '73.

120 THE UNITED STATES OF AMERICA, }
Western District of South Carolina. }

WILLIAM RICHARDSON DAVIE, STEPHEN McPHERSON WOOLF, and MARY FRASER, His Wife; JOHN McKENZIE DAVIE, and ALLEN JONES DAVIE, Heirs-at-Law of the Late Dr. William Richardson Davie, Citizens of the State of Texas, Plaintiffs,
against
JAMES B. HEYWARD, the Younger, and SARAH B., His Wife, Citizens of the State of South Carolina; Mary Wysong and Her Husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, Minor Children of the Late Josiah Bedon and Mary, His Wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and Her Husband, Allen C. Izard; Jeanie B. Farrow and Her Husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a Minor, Defendants. } Judgment in Ejectment.

At Greenville, in the district court for the western district of South Carolina, having jurisdiction of all cases (except appeals and writs of error) cognizable in a circuit court of the United States, August term, 4th August, 1873.

Whereas the summons and copies of the complaint herein have

been personally served — the defendants James B. Heyward,
121 the younger, and Sarah B., his wife, the actual tenants in possession of the real estate mentioned in the complaint, on the seventh day of March, 1873, and on Robin Carr Bedon, a minor, on the 23rd day of July, 1873; and whereas the defendants Jeannie B. Farrow and her husband, T. Stobo Farrow; Julia Izard and her husband, Allen C. Izard, and Richard Bedon have voluntarily appeared and demanded, by their attorneys, copies of the said complaint, by whom service of the same has been duly acknowledged; and whereas the defendants Mary Wysong and her husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon and Mary, his wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, and A. Stobo Bedon could not, after due diligence, be found within the said district, and that fact appeared by affidavit to the satisfaction of the said court, and in like manner it appeared that they were proper parties to an action relating to real property in the said district; service of the summons upon such defendants by publication was ordered, and pursuant to such order the said summons was duly published in two newspapers named and appointed in said order once in each week for the space of six successive weeks, and copies of the said summons and complaint were duly
122 mailed on the fourth day of June, 1873, addressed to each one of the said defendants at the post offices nearest their respective residences; and whereas all the said defendants, to wit, James B. Heyward, the younger, and Sarah B., his wife; Mary Wysong and her husband, Dr. R. Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon and Richard Bedon, for themselves; Alice Bedon and Josiah Bedon, minors as aforesaid, by James B. Heyward, their guardian *ad litem*, appointed by order of court on the 28th day of July, 1873, and Robin Carr Bedon, minor as aforesaid, by Richard S. Bedon, his guardian *ad litem*, appointed by order of said court on the 31st day of July, 1873, have appeared, and by their attornies duly served copies of their joint and several answers to the said complaint on the plaintiffs' attornies, service whereof has been duly acknowledged; and whereas the said plaintiffs did, on the 31st day of July, 1873, duly serve copies of their reply to the said answer of the said defendants upon their said attornies; and whereas afterwards—that is to say, on the day and at the place aforesaid—before the Honorable Geo. S. Bryan, judge of the district court for the western district of South Carolina, having jurisdiction of all causes (except appeals and writs of error) cognizable
123 in a circuit court of the United States, came as well the said plaintiffs, by McCrady and Son, their attorneys aforesaid, as the said defendants, by S. P. Hamilton and Porter and Conner, their attorneys aforesaid, and this cause having been tried before the said judge and a jury as to certain issues, the said jury, to wit, J. P. Hillhouse, foreman; Vincent Austin, Perrin Burns, G. W. Carter, Joseph Cooper, Francis Edwards, W. R. B. Farr, Lucius

Goddard, B. D. Garrison, B. D. Hamby, William B. Johnson, and Washington Johnson, having been drawn according to the directions of the act of Congress in such case made and provided and sworn as the jury aforesaid to say the truth of the within contained, do on their oath say:

First. That the plantation at Landsford, the subject of this suit, was the property of General William Richardson Davie at his death, which occurred on the fifth day of November, 1820, and that General Davie devised the plantation under the residuary clause in his will, dated the 17th September, 1819.

Second. That the family of the testator at the time of his death consisted of the following persons:

1. Allen Jones (son), born 16th February, 1785 (who resided out of the State of South Carolina), married, and who then had issue, three sons and one daughter, the eldest of whom was William Richardson, father of the plaintiffs in this case, which son Allen Jones by a second marriage had issue, five daughters and another son.

124 2. Hyder Alli (son), born 29th October, 1786 (who resided near but not with the testator,) married, and who then had issue, one daughter, Julia A., then a minor, unmarried, but who afterwards married Richard S. Bedon and was mother of the defendants, as hereinafter mentioned.

3. Mary Haynes (daughter), born 25th June, 1790; then unmarried, residing with the testator; afterwards the wife of John Crockett, with two sons and two daughters.

4. Sarah Jones (daughter), born 12th March, 1793; then the wife of William F. De Saussure, with issue then born, two daughters and a son, who was born December, 1819, and was called, after the testator, William Davie De Saussure; and which daughter afterwards had issue, another daughter and two sons.

5. Martha Rebecca (daughter), born 13th October, 1796; then unmarried, residing with the testator; afterwards the wife of Churchill B. Jones, with issue, a son and a daughter.

6. Frederick William (son), born 11th April, 1800; then residing with the testator; an infant and unmarried.

Third. That upon the death of General Davie, Frederick William entered into and took possession of the said plantation under the devise in his father's will and held the same until his death, which took place 29th April, 1850, he having had but one child, a son, who died in infancy, before his father's death, to wit, in 1832.

125 Fourth. That Hyder Alli died before Frederick William, to wit, 13th June, 1848, having had issue, but one child, a daughter before mentioned, to wit, Julia A., who after General Davie's death had intermarried with Richard S. Bedon, by whom she had issue as follows: 1, Josiah Bedon, now deceased, leaving a widow, Mary, now the wife of Doctor R. Wysong, and two children, Josiah and Alice Bedon, minors; 2, Hyder Davie Bedon; 3, William Z. Bedon; 4, Julia, wife of Allen C. Izard; 5, Jeannie B., wife of T. Stobo Farrow; 6, Sarah B., wife of James B. Heyward, the younger (the said James B. Heyward and Sarah B., his wife, being

now the *tene* tenants of the lands in question); 7, A. Stobo Bedon; 8, Richard Bedon; 9, Robin Carr Bedon, the last of whom is still a minor and all of whom now living are defendants in this cause and of whom Josiah, Hyder D., and William Z. were living at the death of their grandfather, Hyder Alli, and A. Stobo, born after his death and before the death of Frederick William Davie.

Fifth. That Hyder Alli by his last will and testament, a copy of which is made part of this verdict, devised and bequeathed his whole estate, real and personal, to Frederick William Davie, Lewis A. Beckham, and William F. De Saussure, in trust for his daughter, Mrs. Bedon, and her children.

126 Sixth. That Frederick William during his last illness sent for Dr. William R. Davie, then a resident of Alabama, to come to him at Landsford to arrange with him for the continued occupation of the lands by the widow of Frederick William after his death; that Dr. William R. Davie did accordingly make a jour- to South Carolina, but did not reach Landsford until after his uncle's death; that upon the arrival of the said Dr. William R. Davie from Alabama, after the death of the said Frederick William, he entered upon and took possession of the said lands, & in compliance with his uncle's wishes leased the same to Frederick G. Fraser, the brother of the widow and the qualified executor of Frederick William, for a term of ten years at an annual rent — twenty thousand pounds ginned cotton; that Frederick G. Fraser, as executor, having thus, in compliance with the wish of Frederick William Davie, secured a lease of the place for a number of years, placed Churchill B. Jones, son of Martha Rebecca Jones and nephew of the said Frederick William, in charge of the place, and that the widow, with the said Churchill B. Jones, continued to reside upon the said lands and with the said Churchill B. Jones worked the said plantation in the interest of the estate of Frederick William until dispossessed under the proceedings in the case of Beckham and De Saussure against De Saussure.

127 That on the 28th June, 1850, Frederick G. Fraser, brother of the said widow and the said executor of Frederick William Davie, filed a bill in equity, in Richland district, praying to be relieved from the said lease on the ground of mistake, as he had since been advised that the title to the said lands was not in the said William R. Davie, but either in the heir general of Hyder Alli or in the grandsons of Hyder Alli, the sons of Mrs. Julia A. Bedon.

That to this suit William R. Davie, Richard S. Bedon and Mrs. Julia A. Bedon and their sons, Josiah Bedon, Hyder D. Bedon, and William Z. Bedon, and Louis A. Beckham and William F. De Saussure, trustees under the will of Hyder A. Davie, were made parties, and the bill taken *pro confesso* against all the defendants.

That the cause came on to be heard before Chancellor Johnston, who, on the 19th March, 1851, by decree dismissed the said bill; that notice of appeal from this decree was given, but the appeal was not prosecuted and finally abandoned, and the decree remains unreversed, copy of which lease, bill, and decree are made part of this verdict.

That William R. Davie, then residing in Alabama, remained in possession of the lands by his tenants, under the lease, until his death, which took place on the 4th January, 1854.

128 Seventh. That some time after the death of Dr. William R. Davie, to wit, on the 9th September, 1854, an action of trespass to try title was brought by Lewis A. Beckham and William F. De Saussure, as survivors of Frederick William Davie, Lewis A. Beckham, and William F. De Saussure, trustees under the will of Hyder Alli Davie, against William D. De Saussure in the court of common pleas for Chester district, and upon a special verdict found it was adjudged that the said plaintiffs Lewis A. Beckham and William F. De Saussure had right and were entitled to the said lands, and that the said plaintiffs should recover against the said defendant William D. De Saussure the said lands, which judgment was upon appeal confirmed by the court of errors for the State of South Carolina, a copy of the record in which case is made part of this verdict.

That under the judgment the said Lewis A. Beckham and William F. De Saussure obtained possession of the lands in 1856.

Eighth. That Frederick G. Fraser, executor of Frederick William Davie, departed this life on or about the 1st February, 1852, and that thereupon William D. De Saussure, who had been named as executor in the will of Frederick William Davie, qualified thereon.

Ninth. That some time after the decision of the court of errors of the State of South Carolina of the case of Beckham and De

129 Saussure against De Saussure and final judgment entered thereon in the court of common pleas for Chester district proceedings were had in the court of equity for Chester district by and among the children of Mrs. Julia Bedon for a partition of the Landsford plantation among said children; that under said proceedings the said Landsford plantation was sold by the commissioner in equity for Chester district, and that Churchill B. Jones became the purchaser, paying a portion of the purchase-money in cash and giving his bond with a mortgage of the premises for the balance; that thereafter Churchill B. Jones conveyed a considerable portion of said Landsford plantation to Cadwalader Rives and W. D. Fudge and remained in possession of the remainder himself; that thereafter the commissioner in equity for Chester district filed his bill in the court of equity for Chester district against said Churchill B. Jones, C. Rives, and W. D. Fudge for a foreclosure of the mortgage given to said commissioner in equity to secure the purchase-money; that under said proceedings a decree of foreclosure was had, a sale ordered, and the premises sold by the said commissioner in equity, and that at the said sale T. Stobo Farrow, as the agent of the children of Mrs. Julia Bedon, became the purchaser, and that

130 under said title defendants now hold, and that the defendant James B. Heyward, the younger, is now in possession under a lease from T. Stobo Farrow as said agent of said heirs.

Tenth. That the said plaintiffs, William R. Davie, Mary Fraser, wife of Stephen McPherson Woolf; John McKenzie Davie, and Allen Jones Davie, are the only surviving heirs-at-law of the said Dr.

William R. Davie, who died intestate, and that the said plaintiffs *who* are citizens of the State of Texas and are of the ages following, to wit: William R. Davie, born 15th June, 1843; Mary Fraser Woolf, born 5th September, 1845; John McKenzie Davie, born 24th October, 1847, and Allen Jones Davie, born 31st July, 1850.

If upon the facts thus found the court shall be of opinion that the plaintiffs are entitled to the land, then we find for the plaintiffs the land described in plat made by Charles Boyd, dated 17th May, 1813, as mentioned in the plaintiffs' complaint, and which lands are designated and contained within the lines indicated within the said plat by the numbers 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31 and the islands opposite and five dollars damages; but if upon the facts found the court shall be of the opinion that the plaintiffs have no title, then we find for the defendants.

121 And the questions of law having been reserved for argument before the said Honorable George S. Bryan, judge as aforesaid, and the same having been argued, now, on motion of McCrady & Son, for the plaintiffs, it is adjudged that the plaintiffs, William Richardson Davie, Stephen McPherson Woolf, and Mary Fraser, his wife; John McKenzie Davie, and Allen Jones Davie, recover of the defendants, James B. Hayward, the younger, and Sarah B., his wife; Mary Wysong and her husband, Alice Bedon and Josiah Bedon, minor children of Josiah Bedon and Mary, his wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a minor, the possession of the real property mentioned in the complaint; and, further, that they recover of the defendants the sum of five dollars damages for the withholding thereof, and also the sum of one hundred and forty-three dollars and fifteen cents, costs of this action, amounting in the whole to the sum of one hundred and forty-eight dollars and fifteen cents.

(Sig.) DAN'L HORLBECK,
C. D. C. U. S. for W. D. S. C. (Greenville).

16th August, 1873.

Endorsements on back:

United States of America, western district of South Carolina. William R. Davie *et al.*, plaintiffs, *vs.* James B Heyward, Jr., *et al.*, defendants. Judgment in ejectment. Filed 16th May, 1873.

132 HYDER D. BEDON & Others
vs.
CHURCHILL B. JONES. } Bill to Foreclose Mortgage.

On hearing the pleadings in this case and upon motion of the complainants' solicitor—

It is ordered that it be referred to the commissioner of this court to ascertain and report the amount of principal and interest due to

the complainants on the mortgage debts described in the pleadings, and if a sale is ordered the time and terms of the same.

30th June, 1868.

W. D. JOHNSON.

H. D. BEDON & Others
vs.
C. B. JONES & Others.

I ascertain that the amount of principal and interest due to complainants on 1st July, 1868, amounted to forty-one thousand & sixty-nine $\frac{74}{100}$ dollars. There are two instalments of $4,285.00 each not yet matured, but falling due respectively on the 1st day of January, 1869, and on the 1st day of January, 1870, *becoming* interest from 1st day of January, 1860.

It is recommended that the mortgaged premises described in the pleadings be sold on sale day in October next on a credit of one, two, and three years, with interest from the day of sale, secured by the bond of purchasers, with good securities and mortgage of the property sold.

June 30th, 1868.

Respectfully submitted.

GILES J. PATTERSON, *C. E., C. D.*

Filed 30th June, 1868.

C. J. PATTERSON, *C. E., C. D.*

133 HYDER D. BEDON and Others
vs.
CHURCHILL B. JONES and Others. } Bill to Foreclose Mortgage.

On motion of Farrow & Duncan, complainants' solicitors, it is ordered that the report of the commissioner made in this case be confirmed and become the decree of this court.

And it is further ordered that if the defendant Churchill B. Jones do not pay the complainants the amount reported due in this case, with accruing interest and costs, on or before the first Monday in October next that the commissioner in equity for Chester district, after previous advertisements for at least three weeks, sell, at Chester court-house, on said first Monday in October next, or some convenient sale day thereafter, the said mortgaged premises, known as the Landsford plantation and described in the pleadings, on a credit of one, two, and three years, with interest from the day of sale, the purchaser being required to give bond and approved security and a mortgage of the premises to secure the purchase-money, with the costs of these proceedings, to be paid in cash on the day of sale.

In making said sale the commissioner to sell, first, that portion of said Landsford plantation which is alleged by the said C. B. Jones to have been conveyed by him to the defendant
134 James B. Massey, and, a sufficient sum not being realized therefrom to satisfy the said mortgage debt, with accruing

interest and costs, he shall next expose to sale that part of said Landsford plantation alleged to have been sold to defendant R. H. Tudge, and, if the proceeds are not sufficient to pay the aforesaid mortgage debt and accruing interest and costs, he then proceed to sell that portion of said plantation alleged to have been sold to the defendant C. Rives, the proceeds of said sale to be held subject to the further orders of this court; and it is further ordered, on a sale as aforesaid of said Landsford plantation, the said Churchill B. Jones, the defendant, and all claiming under him be forever debarred and foreclosed all right and equity of redemption in and to said premises.

30th June, 1868.

W. D. JOHNSON.

HYDER D. BEDON *et al.*
vs.
C. B. JONES *et al.*
} To Foreclose Mortgage.

In pursuance of the decretal order of the court in this case I sold at Chester court-house, on sale day in February, 1869, all of Landsford plantation as described in the pleadings in said case as follows, to wit:

1st. That portion of said plantation alleged to have been conveyed to *have been conveyed to* James R. Massey 28th June, 1866, containing 1,974 acres, more or less, to T. Stobo Farrow at $5.50 per acre, amounting in the aggregate to $10,857.00.

135 2nd. That portion of said tract said to have been conveyed to R. H. Fudge in 1859, containing 500 acres, more or less, to T. Stobo Farrow at $1.00 per acre, amounting to $500.00.

3rd. That portion of said tract conveyed to C. Rives in 1859, containing 602 acres, more or less, to T. Stobo Farrow at $1.00 per acre, amounting to $602.00.

The total amount of sales was $11,959.00, which was less than the mortgage.

The purchaser paid in cash the sum of two hundred and eighty-six $\frac{6}{100}$ dollars, being — of suit and sale, but has not complied with terms of sale in other respects, and hence no conveyances have been executed. The purchaser alleges that he has purchased said lands for the benefit of the heirs of Mrs. Julia Bedon, deceased, the parties entitled to the proceeds of sale, and by reason of the minority of some of them he would have to ask the aid of the court to confirm the purchase. In order that he may procure such authority it is recommended that he have further time, till 1st day of September next, within which to comply with terms of sale.

Respectfully submitted.

May 1st, 1869.

GILES J. PATTERSON,
Special Master.

Filed 1st May, 1869.

W. M. CHAMBEBS, *Clerk.*

136 HYDER D. BEDON & Others
vs.
CHURCHILL B. JONES & Others. } Bill for Foreclosure, Relief, &c.

It being represented that T. Stobo Farrow, who bid off the lands referred to in the pleadings in this case, was acting in said purchase as the attorney and agent for the complainants, and bid of- said lands for the benefit of the complainants to prevent a sacrifice of complainants' interests, it is, on motion of Farrow and Duncan, complainants' solicitors—

Ordered that it be referred to Giles J. Patterson, special referee, to inquire and report whether it would be to the interest of the minor complainants for the purchase of said lands to be confirmed in the complain-ts in lieu of their shares of the proceeds of said sale, it being represented to the court that C. B. Jones, C. Rives, and others, defendants in this case, who had previously contracted to pay the sum of nineteen thousand dollars for a quitclaim title to the interest of the complainants in said lands, the consummation of which had been authorized by this court, still express a willingness to carry out said contract on condition that said sum of nineteen thou-
sand dollars be accepted by said complainants as in full satis-
137 faction of the balance of the debt secured by bond of C. B. Jones and mortgage foreclosed by these proceedings. It is, on motion as aforesaid, further—

Ordered that it is also referred to Giles J. Patterson, as special referee, to inquire and report whether it would be to the interest of minor complainants for said offer to be accepted.

29th September, 1869.

WM. M. THOMAS.

HYDER D. BEDON & Others
vs.
C. B. JONES *et al.* }

The lands sold on sale day in February, 1869, under order in this case brought the sum of $11,959.00 in the aggregate, and were bid off by T. Stobo Farrow. On 19th January, 1869, the said T. Stobo Farrow entered into a written agreement with C. B. Jones, C. Rives, W. D. Fudge, and James R. Massey to sell said lands to C. Rives, W. D. Fudge, and James R. Massey for the sum of $19,000.00, to be paid one-third in cash and the balance in two equal annual instalments, with interest from day of execution of deeds of conveyance, and at the same time rented said lands to same parties for 1869 for the sum of $3,000.00 cash. The referee must conclude from
these facts that said lands are worth more than $11,959.00,
138 the purchase-money at sale in February last, and therefore that it will be to the interest of the heirs of Mrs. Julia Bedon, who are the complainants in this case, that the said purchase shall stand for their benefit, and it — so recommended.

It is further recommended that the titles be made to complainants in lieu of their share of the proceeds of said sale.

From the evidence brought before me I am satisfied that C. B.

Jones is totally insolvent—possessed of very little property, with unsatisfied judgments to a large amount now in the sheriff's office. It also appears that he owes a large sum of money to other parties that are not in judgment. The prospect, therefore, that the complainants will ever be able to recover anything from the defendant C. B. Jones in addition to the lands above referred to is so remote and improbable that it appears no injustice can be done the complainants for them to remit to said Jones the balance that is owing by him on the original mortgage debt.

It is recommended, therefore, that if the said C. Rives, W. D. Fudge, and James R. Massey shall comply with the terms of foreclosure as expressed in the indenture hereinbefore referred to, executed 19th January, 1869, on or before 1st day of January, 1870, that the titles to said land be made to C. Rives, W. D. Fudge, and James R. Massey or such persons as they may indicate, and
139 that the same be accepted in full satisfaction of the balance of the bond of C. B. Jones which was the subject of this suit. It is further recommended that the titles to complainants be not executed till the said Rives, Fudge, Jones, and Massey shall fail to fulfil- the terms of this agreement, and, if they do comply, that the deeds of conveyance be made to said purchasers without warrenty, as agreed upon, and not to complainant-; and if they do not comply, then the deeds be made to complainant-.

Respectfully submitted.

GILES J. PATTERSON, *Referee.*

Testimony.

S. P. Hamilton says he has in his possession an execution in favour of Mrs. Davie against C. B. Jones on which there is now a balance due of over $9,000; that Jones own- no real estate, and his personal property will not exceed $2,000 in value. He is also largely indebted to parties whose claims are not in judgments. The judgment in favour of Mrs. Davie is the oldest.

John A. Bradley, Sr., says that he is the deputy sheriff, and that the judgments against C. B. Jones in the office of the sheriff, exclusive of the one in favor of Mrs. Davie, will amount at present to at least seventeen thousand dollars; that Jones is reported to be totally insolvent; that none of the plaintiffs in judgment
140 have ordered him to collect, and no steps have been taken to that end, although some of them are several years old.

GILES J. PATTERSON, *Referee.*

Filed 24th September, 1869.

W. M. CHAMBERS, *Clerk.*

HYDER D. BEDON & Others *vs.* C. B. JONES & Others } Bill for Foreclosure of Mortgage, Relief, &c.

The special referee having reported that he is satisfied it would be to the interest of the complainant minors concerned for the pur-

chase of the lands referred to in this case to be confirmed in the parties entitled to the funds arising from the sale of said lands in lieu of their share in the proceeds of said sale, it is, on motion of Farrow & Duncan, comp. sol.—

Ordered that said purchase be so confirmed and the title to said lands be vested in the complainants.

The special referee having also reported that he is satisfied that it would be to the interest of the said minors for the offer of (defendants) C. Rives, W. D. Fudge, Jas. R. Massey, & C. B. Jones to comply with the terms of purchase heretofore agreed upon, provided
141 the purchase-money, to wit, nineteen thousand dollars, be accepted as satisfaction for the balance of the debt due complainants on the bond of C. B. Jones, it is, on motion, as aforesaid—

Ordered that the said offer be accepted upon the defendants above named complying strictly with the terms of said agreement and upon their compliance with the terms and the payment of the purchase-money as it fall due; that said Jones be absolved from the payment of the balance of said debt, and that said Jones' bond be thereupon cancelled.

24th September, 1869.

W. M. THOMAS.

Names of Complainants.

Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jane P. Farrow and her husband, T. Stobo Farrow; Sallie B. Bedon, Archibald Stobo Bedon, Richard Bedon, and Mary Bedon, widow of Josiah Bedon, and their children, Alice Bedon and Josiah Bedon, by their next friend, Richard Bedon.

Names of Defendants.

Churchill B. Jones, R. H. Fudge, C. Rives, and James R. Massey.

142 THE STATE OF SOUTH CAROLINA, }
Chester County. }

I, C. C. Macoy, clerk of the court of common pleas and general sessions, do hereby certify that the within, hereunto annexed, consisting of fifteen pages, doth contain a true exemplification of the proceedings had in the court in a certain case wherein H. D. Bedon and others were plaintiffs and Churchill B. Jones *et al.* were defendants, as appears by the original records remaining in my office.

In testimony whereof I have hereunto set my hand and the seal of the court this 13th day of September, A. D. 1873.

C. C. MACOY, *Cl'k C. C.*

Endorsements on back:

Chester C. H. D. Bedon *et* — *vs.* C. B. Jones *et al.* Bill to foreclose mortgage. Filed May 14, 1867. G. J. Patterson. *c.* Exhibit in writ of error. C. H. S., U. S. judge. Fees, $5.06¼. Filed 9th Dec., 1867. E. M. Seabrook, C. D. C. U. S., S. C.

143 STATE OF GEORGIA, }
Fulton County. }

This indenture, made this the fifth day of February, anno Domini one thousand eight hundred and seventy-three, between Jeannie B. Farrow, wife of T. Stobo Farrow, of the State and county aforesaid, of the first part, and Sallie B. Heyward, wife of James B. Heyward, Jr., of Chester county, South Carolina, of the second part, witnesseth: That the said Jeannie B. Farrow, in consideration of the sum of twenty-four hundred dollars in hand paid by the said Sallie B. Heyward, the receipt whereof is hereby acknowledged, hath granted, bargained, sold, and quitclaimed, and by these presents doth grant, bargain, sell, and quitclaim, unto the said Sallie B. Heyward and to her heirs and assigns forever all of her, the said Jeannie B. Farrow's, right, title, and interest (to wit, one undivided fifth part) in a certain tract or parcel of land lying and being situated in Chester county, South Carolina, known as Landsford plantation, containing three thousand acres, more or less, formerly belonging to the Davie estate; to have and to hold the said bargained premises, with all and singular the rights, members, and appurtenances thereto belonging or in anywise appertaining, to the only proper use, benefit, and behoof of her, the said Sallie B. Heyward, and her heirs and assigns; and the said Jeannie B. Farrow, for herself, her heirs, executors, administrators, and assigns, the said bargained premises unto the said Sallie B. Heyward and her heirs against the said Jeannie B. Farrow, her heirs and assigns, and all per-
144 sons lawfully claiming under her or in her right will forever warrant and defend by virtue of these presents.

In witness whereof the said Jeannie B. Farrow hath hereto set her hand and affixed her seal the day and year first above written.

JEANNIE B. FARROW. [SEAL.]

Signed, sealed, and delivered in the presence of—

C. A. SIMPSON.
P. ROMARE,
Notary Public.

STATE OF GEORGIA, }
Fulton County. }

Personally came before me Dr. C. A. Simpson, who, being duly sworn, made oath that he and Paul Romare in the presence of each other witnessed the due execution of the foregoing deed by Jeannie B. Farrow for the purposes therein set forth.

C. A. SIMPSON.

Sworn to and subscribed before me this the 5th day of February, 1873.

P. ROMARE,
Notary Public.

STATE OF GEORGIA, }
Fulton County. }

I, H. P. Farrow, a commissioner for South Carolina residing in Georgia, do hereby certify unto whom it may concern that on this day Dr. C. A. Simpson, with whom I am personally acquainted, personally appeared before me and made oath that he saw the
145 within-named Jeannie B. Farrow sign, seal, and as her act and deed deliver the foregoing deed for the uses and purposes therein mentioned, and that he, the said C. A. Simpson, with P. Romare, in the presence of each other, witnessed the due execution thereof.

C. A. SIMPSON.

Sworn to before me this the 26th day of May, 1873.
HENRY P. FARROW,
Commissioner of Deeds for the State of South Carolina
Residing in the State of Georgia.

Endorsements on back:
h. Jeannie B. Farrow to Sallie B. Heyward. Deed to $\frac{1}{5}$ undivided interest in Landsford plantation, in Chester county, South Carolina, including the $\frac{1}{10}$ individual interest of Jeannie B. Farrow and also the $\frac{1}{10}$ interest purchased by her of A. Stobo Bedon. Register's office, Oct. 16th, 1873. Registered in Book T T No. 499, pages 711 & 712. C. C. Macoy, R. M. C. Exhibit in writ of error. *h.* C. H. S., U. S. judge. Master's office, Chester county, Oct. 17, 1873. I certify the within conveyance has been registered in this office. J. M. Brawley, master. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

146 STATE OF GEORGIA, }
Fulton County. }

This indenture, made this the seventeenth day of March, A. D. eighteen hundred and seventy-three, between T. Stobo Farrow, of the State and county aforesaid, attorney for Hyder D. Bedon, of the State of Mississippi and county of Bolivar, of the first part, and Sallie B. Heyward, of Chester county, South Carolina, of the second part, witnesseth:

That the said T. Stobo Farrow, attorney as aforesaid, in consideration of the sum of fifteen hundred dollars, the receipt whereof is hereby acknowledged, cash in hand, paid by the said Sallie B. Heyward for the $\frac{1}{5}$ undivided interest in the tract of land hereinafter more particularly described and certain claims held by the said H. D. Bedon against Sallie B. Heyward, Julia D. Izard, H. D. Bedon, assignee of W. Z. Bedon; A. Stobo Bedon, and Richard Bedon for three hundred and one dollars and $\frac{75}{100}$ ($301.75) each (cash advanced by the said H. D. Bedon for their benefit in disencumbering the estate of R. B. Bedon, deceased), hath granted, bargained, sold, and quitclaimed, and by these presents doth hereby grant, bargain, sell, and quitclaim, unto the said Sallie B. Heyward, her

heirs and assigns forever, one-fifth undivided interest in and to a certain tract of land lying and being situated in Chester county, South Carolina, known as Landsford plantation, containing three thousand acres, more or less, formerly belonging to the Davie estate (said $\frac{1}{5}$ interest being composed of $\frac{1}{10}$ of the said H. D. Bedon's undivided interest and $\frac{1}{10}$ interest of Julia D. Izard received
147 by the said H. D. Bedon in exchange for $\frac{1}{10}$ interest in Horseshoe plantation); to have and to hold the said bargained interests, with all and singular the rights, members, and appurtenances thereto belonging or in anywise appertaining, to the only proper use, benefit, and behoof of her, the said Sallie B. Heyward, her heirs and assigns; and the said T. Stobo Farrow, attorney as aforesaid for the said Hyder D. Bedon, his heirs, executors, administrators, and assigns, the said bargained premises unto the said Sallie B. Heyward, her heirs and assigns, against the said Hyder D. Bedon, his heirs and assigns, will forever warrant and defend by virtue of these presents.

In witness whereof the — T. Stobo Farrow, attorney for H. D. Bedon as aforesaid, hath hereunto set his hand and seal the day and year above written.

HYDER D. BEDON, [SEAL.]
Per T. STOBO FARROW, *Att'y.*

Signed, sealed, and delivered in the presence of—
W. IZARD HEYWARD.
C. A. SIMPSON.

STATE OF GEORGIA, }
Fulton County. }

I, Henry P. Farrow, a commissioner for South Carolina residing in Georgia, do hereby certify unto whom it may concern that on this day Dr. C. A. Simpson, with whom I am personally acquainted, personally appeared before me and made oath that he saw the within-named T. Stobo Farrow, as attorney for H. D. Bedon, sign, seal, and as his own act and deed deliver the foregoing deed for the uses and purposes therein mentioned, and that he, the said
148 C. A. Simpson, with W. Izard Heyward, in the presence of each other, witnessed the due execution thereof.

C. A. SIMPSON.

Sworn to before me this the 26th day of June, 1873.
HENRY P. FARROW,
Commissioner of Deeds for the State of South Carolina, to Reside in the State of Georgia.

Endorsements on back:

g. Hyder D. Bedon, per attorney, to Sallie B. Heyward. Deed to $\frac{1}{5}$ undivided interest in Landsford plantation, in Chester county, South Carolina. Registrar's office, October 16th, 1873. Recorded in Book T T No. 500, pages 712 & 713. C. C. Macoy, R. M. C. *g.* Exhibit in writ of error. C. H. S., U. S. judge. I certify that the

within conveyance has been registered in my office. October 16th, 1873. J. M. Brawley, master. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

149 OFFICE OF COUNTY TREASURER,
CHESTER, S. C., *Dec. 5th*, 1887.

I, John B. McFadden, county treasurer of Chester county, S. C., hereby certify that the Landsford plantation, containing 3,000 acres of land, more or less, lying on the Catawba river, in the eastern part of this county, and known as the plantation of the late Gen'l William R. Davie, dec'd, is assessed for taxes, and taxes are paid thereon at a valuation of $18,000, eighteen thousand dollars.

JNO. B. McFADDEN,
Treas'r Chester County.

Endorsements on back:
d. Exhibit in writ of error. C. H. S., U. S. judge. Filed 9th Dec., 1887. E. M. Seabrook, C. D. C. U. S., S. C.

150 SOUTH CAROLINA, }
Chester County, }

Personally appeared John T. Elliott, deputy clerk of the court of common pleas and general sessions in and for the county of Chester, who on oath says that after examining the records of the register of mesne conveyance he finds that on the 1st day of June, 1857, L. A. Beckham, as trustee, conveyed to Churchill B. Jones the Landsford plantation for the consideration of forty-two thousand eight hundred and fifty dollars.

That on the 5th day of February, 1873, Jeannie B. Farrow conveyed her interest in the Landsford plantation ($\frac{1}{5}$) to Sallie B. Heyward in consideration of twenty-four hundred dollars.

That on the 17th day of March, 1873, Hyder D. Hedon, by his att'y, T. Stobo Farrow, conveyed his interest in the Landsford plantation to Sallie B. Heyward in consideration of the sum of fifteen hundred dollars, the receipt whereof is hereby acknowledged, cash in hand, paid by the said Sallie B. Heyward for the $\frac{1}{5}$ undivided interest in the tract of land hereinafter more particularly described, and certain claims held by the said H. D. Bedon against Sallie B. Heyward, Julia D. Izard, H. D. Bedon, assignee of W. Z. Bedon; A. Stobo Bedon, and Richard Bedon for three hundred and
151 one dollars and $\frac{75}{100}$ ($301.75) each, cash advanced by the said H. D. Bedon for their benefit in disencumbering the estate of R. B. Bedon, deceased.

That on the 24th day of April, A. D. 1887, Richard Bedon conveyed his interest in the Landsford plantation to Sallie B. Heyward in consideration of the undivided interest of the said Sallie B. Heyward in certain lands lying and being situate in Colleton county, South Carolina, known as the Horseshoe plantation, formerly belonging to the Bedon estate, containing six thousand acres, more or less (said interest being one-tenth of the same), this day by deed — conveyance by the said Sallie B. Heyward to the said Richard

Bedon, said deed being executed and delivered simultaneously with execution and delivery of these presents, the receipt whereof is hereby acknowledged.

That Mary F. Woolf conveyed her interest in the Landsford plantation to Wm. R. Davie in consideration of the sum of thirty-five hundred dollars, on the 30th day of July, 1877.

That John M. Davie, on the 30th day of July, 1877, conveyed his interest in the Landsford plantation to Wm. R. Davie in consideration of thirty-five hundred dollars.

That Allen J. Davie, on the 16th day of July, 1877, con-
152 veyed his interest in the Landsford plantation to Wm. R. Davie in consideration of thirty-five hundred dollars.

That on the 18th day of December, 1880, John M. Davie conveyed to F. C. Robertson his interest in the Landsford plantation, being ($\frac{1}{5}$) one-fifth, but not including his, J. M. Davie's, interest in Allen J. Davie's lease of said lands, in consideration of the sum of two thousand dollars.

That Mary B. Woolf on the 18th day of December, 1880, conveyed to Allen Jones her interest in the Landsford plantation (but not including her share in the interest of Allen J. Davie, deceased) in consideration of the sum of two thousand dollars.

JOHN T. ELLIOTT.

Sworn to before me this the 5th day of December, A. D. 1887.

JOHN C. McFADDEN,
Clerk C. C.

Endorsement on back:

"*a*." Exhibit in writ of error. C. H. S., U. S. judge. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

153 STATE OF SOUTH CAROLINA, }
Colleton County. }

This indenture, made this the twenty-fourth day of April, A. D. 1872, between Richard Bedon, of Colleton county, South Carolina, of the first part, and Sallie B. Heyward, of Chester county, South Carolina, of the second part, witnesseth:

For and in consideration of the undivided interest of the said Sallie B. Heyward in certain lands lying and being situated in Colleton county, South Carolina, known as the Horseshoe plantation, formerly belonging to the Bedon estate, containing six thousand acres, more or less (said interest being one-tenth of the same), this day by deed conveyed by the said Sallie B. Heyward to the said Richard Bedon, said deed being executed and delivered simultaneously with the execution and delivery of these presents, the receipt whereof is hereby acknowledged,—hath granted, bargained, sold, and conveyed, and by these presents doth grant, bargain, sell, and convey, unto the said Sallie B. Heyward, her heirs and assigns, all of his, the said Richard Bedon's, right, title, and interest in and to certain lands lying and being situated in Chester county, South Carolina, known as the Landsford plantation, formerly belonging to the

Davie estate, containing three thousand acres, more or less (said interest being one-tenth undivided interest in same); to have and to hold the same bargained premises, with all and singular the rights,
members, and appurtenances thereof to the same *being* be-
154 longing or in anywise appertaining, to the only proper use,
benefit, and behoof of her, the said Sallie B. Heyward, her heirs, executors, administrators, and assigns, in fee simple; and the said Richard Bedon, for himself, his heirs, executors, and administrators, the said bargained interest in said lands unto the said Sallie B. Heyward, her heirs, executors, administrators, and assigns, against the said Richard Bedon, his heirs, executors, and administrators, and all *or* every other person or persons, shall and will warrant and forever defend by virtue of these presents.

In witness whereof the said Richard Bedon hath hereunto set his hand and affixed his seal the day and year just above written.

RICHARD BEDON. [SEAL.]

Witnesses:
CHARLES WITSELL.
J. C. LUCAS.

THE STATE OF SOUTH CAROLINA,
Colleton County.

Personally appeared before me J. C. Lucas, who, being duly sworn, says he was present and saw Richard Bedon sign and seal the above written deed, and that he and Charles Witsell witnessed the due execution thereof.

J. C. LUCAS.

Sworn before me this 22nd day of July, 1873.

JOHN W. BURBIDGE,
Notary Public. [L. S.]

155 Endorsements on back:

Chester. Richard Bedon to Sallie B. Heyward. Deed. Registrar's office, Oct. 16th, 1873. Recorded in Book T T No. 501, pages 713, 714, & 715. C. C. Macoy, R. M. C. Exhibit in writ of error. *i.* C. H. S., U. S. judge. Master's office, Chester county, October 17th, 1873. I certify that the within conveyance has been executed in this office. J. M. Brawley. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

156 THE STATE OF SOUTH CAROLINA:

Whereas I, Mary F. Woolf, wife of Stephen M. Woolf, of Navarro county, State of Texas, together with my brothers, William Richardson Davie, John McKenzie Davie, and Allen J. Davie, as heirs-at-law of our father, William Richardson Davie, and devisees of the late General William Richardson Davie, lately recovered possession of a certain plantation or tract of land known as Landsford, situated on the Catawba river, in the county of Chester, State of South Carolina, as will more fully appear *of* judgment entered of record in

the said cause, in the United States district court for the western district of South Carolina, against James B. Heyward, the younger, and Sarah B., his wife, and other heirs of Julia Bedon and devisees of Hyder A. Davie, and which lands are more fully described in an indenture executed 7th October, 1873, wherein the said James B. Heyward and Sarah B., his wife, are parties of the first part and we, the said William R. Davie, Mary F. Woolf, John M. Davie, and Allen J. Davie, are parties of the second part, which indenture is duly recorded in the office of the register of mesne conveyance for Chester county, State aforesaid, in Book T T, page 700; and whereas we, the said William R. Davie, Mary F. Woolf, John M. Davie, and Allen J. Davie, did, on the — day of ——, 1873, execute a convey-
157 ance to Mary Fraser McCrady, wife of Edward McCrady, the younger, whereby it was intended to convey to the said Mary F. McCrady one undivided fifth part in and to the said plantation so as to constitute her a tenant in common with us in the said plantation or tract of land, each of one undivided fifth part thereof; and whereas, in consequence of a defect in the execution of the said deed, we have since, by deed dated — day of ——, 1877, released and confirmed to her, the said Mary McCrady, the said one undivided fifth part in and to the said plantation, so that I, the said Mary F. Woolf, am now entitled to the one-fifth part thereof as tenant in common with the said William R. Davie, John M. Davie, Allen J. Davie, and Mary F. McCrady; and whereas I, the said Mary F. Woolf, have now sold my one undivided fifth part in and to the said plantation to the said William Richardson Davie, formerly of the State of Texas, now of the State of South Carolina: Now, know all men by the-presents that I, the said Mary Fraser Woolf, for and in consideration of the sum of three thousand five hundred dollars to me in hand paid by the said William Richardson Davie (as follows, to wit, one hundred dollars in cash and the remainder in five several promissory notes, to wit, one for six hundred dollars, due 1st January, 1878; one for the sum of seven hundred dollars, due 1st January, 1879; one for the sum of seven hundred dollars, due 1st January, 1880; one for the sum of seven hundred dollars, due 1st January, 1881: one for the sum of seven hundred dollars, due 1st January, 1882, with interest at the rate of ten
158 per centum from maturity to the time of payment), the receipt whereof I do hereby acknowledge, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said William Richardson Davie all my right, title, and interest in and to the said plantation or tract of land—that is to say, all my said undivided one-fifth part thereof; to have and to hold all and singular the said one undivided fifth part of the said plantation or tract of land unto the said William R. Davie, his heirs and assigns forever; and I do hereby bind myself to warrant and forever defend all and singular the said one undivided fifth part thereof against myself and every other person lawfully claiming or to claim the same by or under me.

In witness whereof I hereunto set my hand and seal this 30th day

of July, in the year of our Lord one thousand eight hundred and seventy-seven.

MARY FRASER WOOLF. [SEAL.]
S. M. WOOLF.

Signed, sealed, and delivered in the presence of—
C. FOUTZ,
L. V. GARLICK,
Witnesses as to Mary Fraser Woolf.
J. C. WILSON,
JNO. H. RICE,
Witnesses as to S. M. Woolf.

159 THE STATE OF TEXAS, }
County of Navarro. }

Before me, J. M. Blanding, commissioner of deeds for the State of South Carolina, this day personally appeared C. Toutz, to me well known, who on oath states that he saw Mary Fraser Woolf, whose name appears to the foregoing instrument of writing, sign, seal, and deliver said instrument of writing and acknowledge that she had signed, sealed, and delivered said instrument of writing for the purposes and considerations therein expressed, and that he signed the same as a witness, together with L. V. Garlick, at her request.

Also this day personally appeared before me Jno. H. Rice, to me well known, who on oath states that he saw S. M. Woolf, whose name appears to the foregoing instrument of writing, sign, seal, and deliver said instrument of writing and acknowledge that he had signed, sealed, and delivered said instrument of writing for the purposes and considerations therein expressed, and that he signed the same with J. C. Wilson at his request.

Also this day personally appears before — Mrs. Mary Fraser Woolf, wife of said S. M. Woolf, parties to the foregoing instrument of writing, who, after being by me examined privily and apart from her said husband and after having said instrument of writing by me explained to her, declared to me that she had signed, sealed, and delivered the same freely and voluntarily; that the same is her binding act and deed for the purposes and considerations therein stated, and that she wishes not to retract the same.

Witness my hand and official seal, at Corsicana, Texas, this 31st day of July, A. D. 1877.

J. M. BLANDING,
Commissioner of Deeds for the State of South Carolina.

160 Endorsements on back:

f. Mary Fraser Woolf to William Richardson Davie. Conveyance in fee. Register's office, September 18th, 1877. I do hereby certify that this conveyance is recorded in vol. 53, No. 672, pages 760, 761, 762. C. C. Macoy, R. M. C. C. *f.* Exhibit in writ of error. C. H. S., U. S. judge. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

161 THE STATE OF SOUTH CAROLINA:

Whereas William Richardson Davie, Mary Fraser Woolf, wife of Stephen M. Woolf, formerly Mary Fraser Davie; John McKenzie, and Allen Jones Davie, as devisees of the late General William Richardson Davie, lately recovered a certain plantation or tract of land known as Landsford, the property of the said General William R. Davie, situated on the Catawba river, in the county of Chester, in an action commenced and prosecuted to judgment in the United States district court for the western district of South Carolina, against James B. Heyward, the younger, and Sarah B., his wife, and other heirs of Julia Bedon and devisees of Hyder A. Davie, as by judgement in the said cause duly entered of record will more fully appear, and which lands are more fully described in an indenture executed the 7th October, 1873, wherein the said James B. Heyward and Sarah B., his wife, are parties of the first part and the said William R. Davie, Mary F. Woolf, John M. Davie, and Allen J. Davie are parties of the second part, which indenture is duly recorded in the office of register of mesne conveyance- for Chester county, in the Book T T, at page 700;

And whereas the said William R. Davie, Mary F. Woolf,
162 John M. Davie, and Allen J. Davie have heretofore conveyed and released one undivided fifth part of and in the said tract of land to Mary Fraser McCrady, wife of Edward McCrady, the younger, formerly Mary Fraser Davie, so that the said William R. Davie, Mary F. Woolf, John M. Davie, Allen Jones Davie, and Mary F. McCrady now stand seized and possessed thereof as tenants in common, each of one undivided fifth part thereof; and whereas since the said conveyance to the said Mary F. McCrady I, the said Allen Jones Davie, have agreed to sell my undivided fifth part in and to the said plantation or tract of land to the said William Richardson Davie:

Now, therefore, know all men by these presents that I, the said Allen Jones Davie, for and in consideration of the sum of three thousand five hundred dollars to me in hand paid at and before the sealing of these presents by the said William Richardson Davie, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said William Richardson Davie all my one equal undivided fifth part or share of, in, and to all that plantation known as Landsford, the property of the late General R. Davie, situ-
163 ated on the Catawba river, in the county of Chester, in the State of South Carolina, as above described, together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the said premises before mentioned, to wit, one undivided fifth part of the said Landsford plantation, unto the said William Richardson Davie, his heirs and assigns forever; and I do hereby bind myself and my heirs, executors, and administrators to warrant and forever defend all and singular the said premises unto the said William Richardson Davie,

his heirs and assigns, against me and my heirs and all other persons lawfully claiming or to claim the same or any part thereof through me.

Witness my hand and seal this 16th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

ALLEN J. DAVIE.

Signed, sealed, & delivered in the presence of—
JOS. W. L. JOHNSON.
C. C. BRUNSON.

164 THE STATE OF ——, }
—— *County.* }

Personally appeared before me C. C. Brunson and made oath that he saw the within-named Allen Jones Davie sign, seal, and as his act and deed deliver the within written deed, and that he, with Joseph W. L. Johnson, witnessed the execution thereof on the sixteenth day of June, 1877.

C. C. BRUNSON.

Sworn to before me this 10th day of September, 1878.

W. W. JORDAN,
Trial Justice.

Endorsements on back:

b. Allen Jones Davie to William Richardson Davie. Conveyance. Register's office, September 18th, 1877. I do hereby certify that this conveyance is recorded in vol. 53, No. 674, pages 764, 765, & 766. C. C. Macoy, R. M. C. C. *b.* Exhibit in writ of error. C. H. S., U. S. judge. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., W. Dist. S. C.

165 THE STATE OF SOUTH CAROLINA:

Whereas I, John McKenzie Davie, of Navarro county, State of Texas, together with my sister, Mary F. Woolf, and her husband, Stephen M. Woolf, and my brothers, William Richardson Davie and Allen J. Davie, as heirs-at-law of our father, William Richardson Davie, and devisees of the late General William Richardson Davie, lately recovered possession of a certain plantation or tract of land known as Landsford, situated on the Catawba river, in the county of Chester, State of South Carolina, as will more fully appear by judgment entered of record in the said cause, in the United States district court for the western district of South Carolina, against James B. Heyward, the younger, and Sarah B., his wife, and other heirs of Julia Bedon and devisees of Hyder A. Davie, and which lands are more fully described in an indenture executed the 7th October, 1873, wherein the said James B. Heyward and Sarah B., his wife, are parties of the first part and we, the said William R. Davie, Mary F. Woolf, and her husband, Stephen M. Woolf; John M. Davie, and Allen J. Davie, are parties of the second part, which indenture is duly recorded in the office of the register of mesne con-

veyance- for Chester county, State aforesaid, in Book T T, at page 700; and whereas we, the said William R. Davie, Mary F. Woolf, John M. Davie, and Allen J. Davie, did, on the — day of ——, 1873, execute a conveyance to Mary Fraser McCrady, wife of Edward McCrady, the younger, whereby it was intended to convey to the said Mary F. McCrady one undivided fifth part in and to
166 the said plantation so as to constitute her a tenant in common with us in the said plantation or tract of land, each of one undivided fifth part thereof;

And whereas, in consequence of a defect in the execution of the said deed, we have since, by deed dated — day of ——, 1877, released and confirmed to her, the said Mary F. McCrady, the said one undivided fifth part in and to the said plantation, so that I, the said John McKenzie Davie, am now entitled to but one-fifth part thereof as tenant in common with the said William R. Davie, Mary F. Wool-, Allen J. Davie, and Mary F. McCrady; and whereas I, the said John McKenzie Davie, have now sold my said one undivided fifth part in and to the said plantation to the said William Richardson Davie, formerly of the State of Texas, now of the State of South Carolina: Now, know all men by these presents that I, the said John McKenzie Davie, for and in consideration of the sum of three thousand five hundred dollars to me in hand paid by the said William Richardson Davie (as follows, to wit, one hundred dollars in cash and the remainder in five several promissory notes, to wit, one for six hundred dollars, due 1st January, 1878; one for the sum of seven hundred dollars, due 1st January, 1879; one for the sum of seven hundred dollars, due 1st January, 1880; one for the sum of seven hundred dollars, due 1st January, 1881, and the last for the sum of seven hundred dollars, due 1st January, 1882, with interest at the rate of ten per centum from maturity to the time of payment), the receipt whereof I do hereby acknowledge, have granted,
167 bargained, sold, and released, and by these presents do grant, bargain, sell, and release, unto the said William Richardson Davie all my right, title, and interest in and to the said plantation or tract of land—that is to say, all my said undivided one-fifth part thereof; to have and to hold all and singular the said one undivided fifth part of the said plantation or tract of land unto the said William R. Davie, his heirs and assigns forever; and I do hereby bind myself to warrant and forever defend all and singular the said one undivided fifth part thereof against myself and any other person lawfully claiming or to claim the same by or under me.

In witness whereof I hereunto set my hand and seal this 30th day of July, in the year of our Lord one thousand eight hundred and seventy-seven.

JOHN M. DAVIE.

Signed, sealed, and delivered in the presence of—

C. FOUTZ.
L. V. GARLICK.

THE STATE OF TEXAS, }
County of Navarro. }

Before me, J. M. Blanding, commissioner of deeds for the State of South Carolina, this day personally appeared C. Foutz, to me well known, who on oath states that he saw John M. Davie, whose name appears to the foregoing instrument of writing,
168 sign, seal, and deliver said instrument of writing and acknowledged that he had signed, sealed, and delivered said instrument of writing for the purposes and considerations therein expressed, and that he signed the same as a witness, together with L. V. Garlick, at his request.

In testimony whereof I have hereunto set my hand and seal of office, at my office, in the city of Corsicana, Texas, this 31st day of July, A. D. 1877.

J. M. BLANDING,
Commissioner of Deeds for the State of South Carolina.

Endorsements on back:

e. John McKenzie Davie to William Richardson Davie. Conveyance in fee. Register's office, September 18th, 1877. I do hereby certify that this conveyance is recorded in vol. 53, No. 673, pages 762, 763, & 764. C. C. Macoy, R. M. C. C. *e.* Exhibit in writ of error. C. H. S., U. S. judge. Filed December 9th, 1887. E. M. Seabrook, C. D. C. U. S., W. dist. S. C.

169 SOUTH CAROLINA:

This is the last will and testament of Hydre A. Davie. I desise and bequeath my whole estate real and personal to F. W. Davie Lewis A. Beckham & W. F. Desaussure in trust for the sole and separate use of my daughter Julia Bedon free from the debts contracts or control of her husband and at her death in trust for her child or children who shall be living at the time of her death, provided that if any of her children shall have died during her life, leaving children who shall be alive at the death of the said Julia such children shall represent their parent, and take the share such parent would have been entitled to if living at her death.

If it shall become expedient to change the i-vestment of any portion of my property such change may be effected with consent of my trustees or a majority of them at the request of my daughter; but the substi-uted property shall be and the same is hereby settled to the same use as attached under this will to the property
170 sold.

It is my will and desire that my negro-'s shall not be removed from the district of Chester in this State.

I constitute the before mention- trustees executors of my will.

In witness whereof I have hereunto set my hand and seal this 25 March 1847.

HY A. DAVIE [SEAL]

Signed, sealed, and published by the testator, in our presence, as

his last will and testament, and we, in his presence and in the presence of each other, have subscribed our names as witnesses at his request.

JAMES BOATWRIGHT.
ROBERT W. GIBBS.
HENRY D. BULL.

SOUTH CAROLINA,
Chester District.

In the court of ordinary, June 27, 1848, personally came into open court Henry D. Bull, who, being duly sworn, saith upon oath that he was present and saw Hydre A. Davie sign, seal, publish,
171 pronounce, and declare the within writing to be and contains his, the said Hydre A. Davie'-, last will and testament; and further sayeth the said Hydre A. Davie was then of sound mind and memory and understanding, to the best of this deponent'- knowledge and belief; and further sayeth that he, this deponent, with James Boatright and Robert W. Gibbs, in the presence of each other, did subscribe their names as witnesses thereto and in the presence of the testator and at his request.

HENRY D. BULL.

Sworn to and signed, dated above.

PETER WYLIE, *Ord'y.*

1848, June 27, F. W. Davie and Lewis A. Beckhem, two of named executors, come into open court and *was* qualified as executors.

PETER WYLIE, *Ord'y.*

STATE OF SOUTH CAROLINA,
County of Chester.

I, William A. Sanders, judge of probate in and for the county of Chester, in said State, do hereby certify that I find the foregoing to be a true & correct copy of the will of the testator above
172 named as appears in "Will Book" A in the office of judge of probate.

The original cannot be found after due diligence.

This 1st day Oct., 1888.

[Seal Court of Probate, Chester County, S. C.]

W. A. SANDERS,
Judge of Probate.

173 UNITED STATES OF AMERICA,
Western District of South Carolina.

W. R. DAVIE & Others
vs.
JAMES B. HEYWOOD, JR., & Others.

To Messrs. McCrady & Son, plaintiffs' att'ys:

You will please take notice that on November 28th, 1887, at the U. S. court-room, in Columbia, 5 o'clock p. m. or as soon thereafter

as counsel can be heard upon the petition of Josiah Bedon, a defendant herein, I will apply to the court holding its term for a writ of error to the Supreme Court of the United States in this cause, for leave to substitute copies of the record of this cause which have been lost, and to fix the amount of the bond to be given by Josiah Bedon, one of the defendants.

S. P. HAMILTON,
Def'd'ts' Att'y.

22d November, 1887.

Endorsements on back:
U. S. of America, western dis'ct of So. Ca. Wm. R. Davie & others *vs.* James B. Heyward, Jr., & others. Notice. S. P. Hamilton, def'd'ts' att'y. Entered in Docket Book, folio 121, Nov. 23, '87. E. M. Boykin, U. S. marshal.

Entry	40
Service	2 00
	$2 40

Copy for McCrady & Son.

W. R. Boykin, D. U. S. M., being duly sworn, says he served copy of within process on Edward McCrady, Jr., in Charleston, S. C., November 23rd, 1887.

W. R. BOYKIN,
Deputy U. S. Marshal.

Sworn to before me November 23rd, 1887.
J. W. HAGOOD,
C. C. C. U. S., Dist. S. C.

Filed November 23rd, 1887.
E. M. SEABROOK,
C. D. C. U. S., S. C.

174 UNITED STATES OF AMERICA,
District of South Carolina.

In the District Court of the United States for the Western District of South Carolina.

To the Hon. C. Simonton, district judge of the United States for the western district of South Carolina:

The petition of Josiah Bedon, now of Washington, in the District of Columbia, respectfully shows that on the — day of ——, 1873, your petitioner was *was* impleaded to answer to a complaint of William R. Davie and others *vs.* James B. Heyward and others in the district court of the United States for the western district of South Carolina, exercising the powers of a circuit court of the United States; that in such action deponent is informed that James B. Heyward, Jr., was, by order of this court, as guardian *ad litem* for your

petitioner, to appear and defend the action for me and in my stead; that at that time your petitioner was an infant of tender years, and he is not informed whether any answer was put in for him or whether he was represented by counsel; that on the — day of August, 1873, at Greenville, in the district court of the United States for the western district of South Carolina, the cause came on for a hearing before the Hon. George S. Bryan, judge of said court, and a jury; that under the instruction of the court the jury found a special verdict, in effect that the plaintiffs should recover the land in dispute without damages; that from the judgment upon said verdict the defendants James B. Heyward, Jr., and wife sued out a writ of error for themselves; the citation was issued and a bond given in accordance with an order of the court and according to law; that shortly after the said W. R. Davie, one of the
175 plaintiffs, and James B. Heyward, Jr., came to a compromise, the terms of which are unknown to deponent, but the result of which was that J. B. Heyward, Jr., one of the defendants, — let into possession of the lands the subject of the suit with the said W. R. Davie; that your petitioner knew nothing of said compromise and could not consent to it, and hereby repudiates it; that said compromise enured entirely and alone to the advantage of the said James B. Heyward, Jr., and entirely against the interest of your petitioner; that your petitioner attained his majority on the 21st December, 1885, and is therefore entitled, under section 1008 of the Revised Statutes of the United States, to sue out his writ of error and have his citation, so that the errors complained of in said cause may be enquired of and corrected in the Supreme Court of the United States. Wherefore your petitioner prays that he may have his writ of error and citation, so that this cause be carried before the Supreme Court of the United States.

S. P. HAMILTON,
Attorney for Petitioner.

DISTRICT OF COLUMBIA, }
City of Washington. }

Personally appeared Josiah Bedon, one of the defendants in the action above named, who, being sworn, says that the facts set forth in the foregoing petition wherein said of his own knowledge are true, and those things said on information and belief he believes to be true.

JOSIAH BEDON.

Sworn to before me this 28th day of October, 1887.

W. T. JOHNSON,
Notary Public.

176 DISTRICT OF COLUMBIA, }
City of Washington. }

Personally appeared Mary Wyson, who, on oath, says that the petitioner herein is her son by a former marriage with Josiah Bedon, who was killed in battle in May, 1864; that the petitioner was born

on the 21st of December, 1864, and attained his majority on the 21st of December, 1885.

MARY WYSONG.

Sworn to before me this 28th day of Oct., 1887.

W. T. JOHNSON,
Notary Public.

Endorsements on back:

United States of America, western district of South Carolina. W. R. Davie and others *vs.* James B. Heyward, Jr., and others. Petition of Josiah Bedon. Filed 9th December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

177 UNITED STATES OF AMERICA,
Western District of South Carolina.

W. R. DAVIE and Others
vs.
JAMES B. HEYWARD, JR., and Others.

Upon hearing the sworn petition of Josiah Bedon and the affidavit of Mary Wysing, his mother—

It is, on motion of S. P. Hamilton, ordered—

That the copy of the record and proceedings in this cause furnished by the plaintiff's attorney be substituted for the originals, which are lost.

That the plaintiff in error, Josiah Bedon, do, on or before December 20th, 1887, enter in a bond, with two good and sufficient sureties, for the sum of two hundred and fifty dollars, and cause the same to be filed in the court by said last day named; that said sureties may be residents of the city of Washington or elsewhere, provided, if said sureties reside beyond the jurisdiction of this court, they shall justify on said bond before the clerk of the Supreme Court of the United States; and said plaintiff in error may, if he be so advised, make a deposit in money to the extent of the sum mentioned for the bond, said deposit to be made with the clerk of this court within the time mentioned in this order for giving the bond.

178 In case bond be given, the condition of the same shall be to the effect that if the said Josiah Bedon, the plaintiff in error, shall prosecute his writ of error to effect and answer all — and costs if he fail to make his plea good, then *that* the obligation to be void; else to remain in full force and virtue.

CHARLES H. SIMONTON,
U. S. Judge.

9th December, 1887.

True copy.

E. M. SEABROOK.
C. D. C., W. Dist. of South Carolina.

179 UNITED STATES OF AMERICA,
District of South Carolina, Fourth Circuit.

In the District Court of the Western District, Holding Circuit Court Powers.

W. R. DAVIE *et al.*, Plaintiffs,
against
JAMES B. HEYWARD, JR., *et al.*, Defendants.

A judgment on verdict was entered in this case at Greenville, South Carolina, on the — day of ——, 1873. One of the defendants, Josiah Bedon, was at that time under the age of twenty-one years. He now files his petition setting forth that he attained full age on 21st December, 1885, and praying that citation may issue for the purposes of a writ of error to review said judgment. His petition is accompanied by the affidavit of his mother, now Mrs. Mary Wysong, fixing his age. The petition and notice were served on Messrs. McCrady & Son, who were the attornies for the plaintiffs on the record. They now appear and state that of the parties to the record they now represent only W. R. Davie. They do not feel authorized to represent any other party and are of the opinion that their authority in the case terminated with the entering of judgment representing W. R. Davie. They contend it does not appear from the record that the interest of the defendant Josiah Bedon is within the jurisdiction of the supreme court, and they ask that he be required to file an affidavit shewing this. Josiah Bedon, having declined to do this, then file- the papers herewith filed, marked
180 Exhibits *a*, *b*, *c*, *d*, *e*, *f*, *g*, *h*, *i*. I do not feel at liberty to refuse the order for citation or to express any opinion as to the jurisdiction of the supreme court. Let the order be prepared for signature and let this opinion and the exhibits be filed.

9th December, 1887.

CHARLES H. SIMONTON,
U. S. Judge.

Endorsements on back:

United States of America, district of South Carolina, fourth circuit. W. R. Davie *et al.*, plaintiffs, against James B. Heyward, Jr., *et al.*, defendants. Filed 9th day of December, 1887. E. M. Seabrook, C. D. C. U. S., S. C.

181 THE UNITED STATES OF AMERICA,
Western District of South Carolina.

WILLIAM R. DAVIE and Others
vs.
JAMES B. HEYWARD, JR., and Others. } Bond.

Know all men by these presents that we, Josiah Bedon, Mary Wysong, and Edward C. McLure, are held and firmly bound unto William R. Davie, Stephen McP. Woolfe, and Mary F., his wife; John McKenzie Davie, and Allen Jones Davie in the full and just

sum of two hundred and fifty dollars, to be paid to the said William R. Davie, Stephen M. Woolfe, and Mary F., his wife; John M. and Allen J. Davie, their certain attorneys, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this tenth day of January, in the year of our Lord one thousand eight hundred and eighty-eight.

Whereas lately, at a district court of the United States held for the western district of South Carolina, — a suit depending in
182 said court between William Richardson Davie, Stephen McPherson Woolfe and Mary Fraser, his wife; John McKenzie Davie, and Allen Jones Davie, plaintiffs, citizens of the State of Texas, against James B. Heyward, the younger, and Sarah B., his wife, citizens of the State of South Carolina; Mary Wysong and her husband, Doctor Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon and Mary, his wife, now Mary Wysong; Hyder D. Bedon, William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, a minor, defendants, judgment was rendered against said defendants, and the said defendant, Josiah Bedon, having obtained a writ of error to the Supreme Court of the United States and filed a copy hereof in the clerk's office of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said William R. Davie, Stephen McP. Woolfe, and Mary F., his wife; John M. Davie, and Allen Jones Davie, citing and admonishing them to be and appear at a Supreme Court of the United States to be holden at Washington the second Monday in October, 1888:

183 Now, the conditions of the above obligation is such that if the said Josiah Bedon shall prosecute his writ of error to effect and answer all costs if he fail to make his plea good, then the above obligation to be void and of no effect; else to remain in full force and virtue.

JOSIAH BEDON. [SEAL.]
MARY WYSONG. [L.]
E. C. McCLURE. [L.]

In presence of—

JAMES LOWNDES.

Approved.

CHARLES H. SIMONTON, *U. S. Judge.*

THE DISTRICT OF COLUMBIA:

Personally appeared before me, James H. McKenney, clerk of the Supreme Court of the United States, the above-bounden Josiah Bedon, Mary Wysong, and Edward C. McClure and made oath sev-

erally that each is worth, over and above his or her just debts, the sum of two hundred and fifty dollars.

JOSIAH BEDON.
MARY WYSONG.
E. C. McCLURE.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

10th January, 1888.

184 UNITED STATES OF AMERICA:

The President of the United States to the Honorable Charles H. Simonton, judge of the district court of the United States for the western district of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in said court for the western district of South Carolina, before you, Charles H. Simonton, judge of the district court of the United States for the western district of South Carolina, between William Richardson Davie, Stephen McPherson Woolfe, and Mary Fraser, his wife; John McKenzie Davie, and Allen Jones Davie, defendants in error, citizens of the State of Texas, against James B. Heyward, the younger, and Sarah B. Heyward, his wife, citizens of the State of South Carolina; Mary Wysong and her husband, Doctor Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon, citizens all of the State of Maryland; Hyder D. Bedon and William Z. Bedon, citizens of the State of Mississippi; Julia Izard and her husband, Allen C. Izard; Jeannie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, plaintiffs in error, citizens of the State of South Carolina, a manifest error hath happened, to the great damage of the said James B. Heyward, the younger, and Sarah
185 B. Heyward, his wife; Mary Wysong and her husband, Doctor Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon; Hyder D. Bedon, William Z. Bedon, Julia Izard, wife of Allen C. Izard; Jeannie B. Farrow, wife of T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon, as by their answer appears—

We, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in that behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday in October, 1888, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid *may* be inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the Honorable Morrison R. Waite, Chief Justice of the

said Supreme Court of the United States, in the year of our Lord one thousand eight hundred and eighty-seven.

9th December, 1887.

[Seal United States District Court, Greenville, S. C.]

EPHRAIM M. SEABROOK,
C. D. C. U. S. for Western District of South Carolina.

186 THE UNITED STATES OF AMERICA:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the district court of the United States for the western district of South Carolina, — James B. Heyward, the younger, and Sarah B., his wife; Mary Wysong and her husband, Doctor Wysong; Alice Bedon, Josiah Bedon, minor children of the late Josiah Bedon; Hyder D. Bedon and William Z. Bedon, Julia Izard and her husband, Allen C. Izard; Jennie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon, Richard Bedon, and Robin Carr Bedon — plaintiffs in error and you are defendants in error, — why the judgment rendered against the plaintiffs in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Charles H. Simonton, judge of the district court of the United States for the western district of South Carolina.

Dec. 9th, 1887.

CHARLES H. SIMONTON,
U. S. Judge for W. District of South Carolina.

187 To William Richardson Davie, Stephen McPherson Wolfe, and Mary Fraser, his wife; John McKensie Davie, and Allen Jones Davie, defendants in error.

On this — day of ——, in the year 1887, personally appeared —— ——, who, being duly sworn, says that he delivered a true copy of the within citation to Edward McCrady, Jr., a member of the firm of McCrady & Son, attorneys for defendants in error.

188 [Endorsed:] United States of America. Wm. R. Davie & others *vs.* James B. Heyward, Jr., & others. Citation. S. P. Hamilton, attorney for plaintiff in error. Original. Filed 12 Dec., 1887. E. M. Seabrook, C. D. C. U. S., S. C.

[Endorsed:] Entered, Docket Civil Cases, folio 122. E. M. Boykin, U. S. marshal. 12 Dec., '87. L. W. Wallace, deputy U. S. M., sworn, says he served a copy of the within citation on Edward McCrady, Jr., at his residence, cor. Pitt & Montague Sts., in person. Dec. 12th, 1887. L. W. Wallace. Thad. S. Burdell (seal), not. pub. for S. C. Marshal's costs, $2.40.

189 UNITED STATES OF AMERICA, }
District of South Carolina. }

In the District Court.

I, E. M. Seabrook, clerk of the district court of the United States for the western district of South Carolina, do hereby certify that the foregoing is a true and correct copy of the records, proceedings, and the special verdict in the case of William R. Davie and others, plaintiffs, against James B. Heyward, the younger, and others, defendants, rendered as aforesaid, together with all the proceedings had in the cause relating to the same.

Given under my hand and seal of the said court at clerk's office, in the city of Charleston and district of South Carolina, this the third day of October, A. D. 1888.

Seal United States District Court, Greenville, S. C.

E. M. SEABROOK,
C. D. C. for Western District of S. C.

[Endorsed:] United States of America. Wm. R. Davie & others *vs.* James B. Heyward, Jr., & others.

Endorsed on cover: Case No. 13,266. South Carolina D. C. U. S.. No. 210. Josiah Bedon, plaintiff in error, *vs.* William R. Davie, Stephen McP. Woolfe, and Mary F., his wife; John McKenzie Davie, and Allen Jones Davie. Filed October 11, 1888.

Office Supreme Court U. S.
FILED.
MAR 3 1892
JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOSIAH BEDON, *Plaintiff in Error*,

vs.

WILLIAM R. DAVIE, STEPHEN McP. WOOLFE and MARY F., his wife, JOHN McKENSIE DAVIE, and ALLEN JONES DAVIE, *Defendants in Error.*

No. 210.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

ARGUMENT.

S. P. HAMILTON,
MILLS DEAN,
Attorneys for Plaintiff in Error.

Supreme Court of the United States.

OCTOBER TERM, 1891.

JOSIAH BEDON, *Plaintiff in Error*,

vs.

WILLIAM R. DAVIE, STEPHEN McP. WOOLFE and MARY F., his wife, JOHN McKENSIE DAVIE, and ALLEN JONES DAVIE, *Defendants in Error.*

No. 210.

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF SOUTH CAROLINA.

STATEMENT OF THE CASE.

In 1820 General William Richardson Davie died at his plantation called Lansford, in Chester District (now county), South Carolina, testate.

There is but one clause of his will with which this controversy has any connection. It is the residuary clause and is as follows:

"Item. I give and devise all the rest and residue of my lands and real estate in the State of South Carolina to my son, Frederick William Davie; to him and his heirs forever, subject, however, to the encumbrances mentioned in this will; and it is my will, and I do hereby devise, that in case of the

death of my said son, Frederick William, without issue male living at the time of his death, then, in that case, I give and devise the lands and real estate so devised as above to the said Frederick William, to his brother, Hyder Ali Davie, to him and his heirs forever, subject, however, to the encumbrances in this will mentioned. And, in case the said Hyder Ali Davie die without issue male living at the time of his death, then, in that case, I give and devise the said lands and real estate to the eldest issue male of my son, Allen Jones Davie, then living when such event shall take place, that is, of the sons he may have living at my death, to him and his heirs forever, subject to the encumbrances directed in this will. And should my said son Frederick William have issue male and such issue male of my said son, Frederick William, should or shall die without issue male living at the time of his death, then, in that case, it is my will and I do devise the lands and real estate so devised and described above, first, to my son, Hyder Ali Davie and his heirs, and then to the eldest issue male living at the time of Allen Jones Davie, under the same limitations and on the same contingencies and in the same order and manner as above directed and devised; should my son, Frederick William die without any issue male living at the time of his death, to them and their heirs forever. And should my son, Hyder Ali Davie have issue male living at the time of his death, and such issue male shall die without leaving issue male living at his death, then, in that case, I give and devise the said lands and real estate so described and devised above, should they so have vested under the above contingencies in such issue male, to the eldest issue male then living of my son, Allen Jones Davie, being of his sons living at my death, to him and his heirs and assigns forever." (Record page 24, folio 53.)

This clause was construed by the Court of Errors of South Carolina in the case of Beckham *vs.* De Saussure (9th Richardson, Law Reports, pp. 587 and 588). The Lansford estate, containing something over three thousand acres, at the death of General Davie passed, under that clause of the will, to his youngest son, Frederick William; Frederick William died in 1850 without issue of any kind. By common consent Dr. William

R. Davie took possession of the Lansford estate under the second clause of General Davie's will, as the eldest issue male of Allen Jones Davie. On the 29th of April, 1850, Dr. W. R. Davie leased the Lansford estate for ten years to Frederick G. Fraser, as executor of Frederick William Davie. Fraser died in 1852 and William Davie De Saussure qualified under the will, having been named therein as executor, and, as such executor, he became tenant in possession of Lansford. On the 9th of September, 1854, an action of trespass to try title, a statutory action in South Carolina enacted to take the place of the action of ejectment formerly in use, was brought by L. A. Beckham and W. F. De Saussure, trustees under the will of Hyder Ali Davie, who had died in 1848, against William Davie De Saussure, executor of Frederick William Davie, as tenant in possession under the lease from William R. Davie to F. G. Fraser, executor of Frederick William Davie. Said action was heard by the court and a jury at Chester Court-house, and postea given to the plaintiffs. It was appealed by the defendant and was heard at May term, 1856, by the Constitutional Court of Errors, the highest court of the State of South Carolina. The plaintiffs, the trustees, prevailed and entered into possession of Lansford.

The parties in interest seem to have taken it for granted that the land passed to the trustees under Hyder Ali Davie's will for the benefit of his devisees, but there is nothing in the case of Beckham *vs.* De Saussure to justify such conclusion.

On the 1st of June, 1857, L. A. Beckham, trustee, for the sum of $42,800, conveyed the Lansford estate to Churchill B. Jones upon certain terms, and took a mortgage for the purchase-money. The said Jones remained in possession until 1868, when the heirs of Hyder Ali Davie commenced an action to foreclose the land mortgage and the place was sold, and came back into the possession of the heirs of Hyder Ali Davie. This present action to recover possession of the Lansford estate was brought in the district court of the

United States for the Western District of South Carolina, and was tried at Greenville, in said district, before the Hon. George S. Bryan and a jury, and on the 8th of August, 1873, a special verdict was found. (See record, p. 18.) The action was entitled: William Richardson Davie; Stephen McPherson Woolfe and Mary Fraser, his wife; John McKensie Davie and Allen Jones Davie, heirs-at-law of the late Dr. William Richardson Davie, citizens of the State of Texas, plaintiffs, against James B. Heyward, the younger, and Sarah B., his wife, citizens of the State of South Carolina; Mary Wysong and her husband, Dr. R. Wysong; Alice Bedon and Josiah Bedon, minor children of the late Josiah Bedon and Mary, his wife, now Mary Wysong; Hyder D. Bedon; William J. Bedon; Julia Izard and her husband, Allen C. Izard; Jennie B. Farrow and her husband, T. Stobo Farrow; A. Stobo Bedon; Richard Bedon, and Robin Carr Bedon, a minor, defendants. On the 16th of August, 1873, the district judge filed his judgment on said special verdict, for the recovery of the property in dispute by the plaintiffs, with $5 damages and $143 costs. The present plaintiff in error, being then in his infancy, arrived at his majority on the 21st of December, 1885, and on the 9th of December, 1887, obtained his writ of error, bringing said cause before this court for the correction of the manifest errors appearing in said transcript. The original record being lost, a copy was furnished by Edward McCrady, Jr., attorney for defendants in error, and by the order of Hon. C. H. Simonton, district judge, was substituted for the original. At the time of granting of the writ of error the attorney for the defendants in error, Edward McCrady, Jr., in accordance with the alleged practice of this court, handed in certain written instruments and affidavits intended to show the value of the matter in dispute, without any designation of what they were intended for. These consist of a deed from Jennie B. Farrow to Sallie B. Heyward (at page 63 of Transcript); Hyder D. Bedon to Sallie Hey-

ward (page 64). Affidavit of Jno. T. Elliott, deputy clerk (page 66); Richard Bedon to Sallie B. Heyward (page 67). Deed from Mary F. Woolfe to Mary F. McCrady and W. R. Davie (pages 68, 69, 70). Deed from Allen J. Davie to W. R. Davie (page 7); John McKensie Davie to Mary F. McCrady (page 72). These documents have nothing whatever to do with the merits of this cause; they are inserted at random in the transcript, it is presumed by the mistake of the clerk of the district court.

Assignment of Error.

The district judge in this case erred in not finding as matter of law on the special verdict rendered on the 9th day of August, 1873, in the case W. R. Davie *et al. vs.* James B. Heyward *et al.*, at Greenville, in the district court of the United States for the Western District of South Carolina.

1. That, as a matter of law, his honor erred in not finding the plaintiffs there; here, the defendants in error; were concluded as to the possession and right of possession to the Lansford lands, by the case of L. A. Beckham, trustee, *vs.* Wm. Davie De Saussure, executor of F. W. Davie, tenant in possession, heard and adjudged finally by the Constitutional Court of Errors of South Carolina, at May term, 1856, the court at that time of last resort in South Carolina, and his honor should have so instructed the jury.

2. That his honor erred in not finding as matter of law that the defendants in error were bound by that adjudication determining the title to Lansford and as establishing a rule of property long acquiesced in in South Carolina, and his honor erred in instructing the jury to find a special verdict to the contrary.

3. That his honor erred in not finding as matter of law that, under the will of General W. R. Davie, his son Frederick William Davie dying without issue, Hyder Ali Davie took an

estate in fee in the Lansford lands, defeasible on the happening of certain contingencies, and he erred in not so instructing the jury.

4. That he erred in finding that Josiah Bedon, Hyder D. Bedon, and Wm. Z. Bedon were not issue male of Hyder Ali Davie living at his death, through their mother, Julia Bedon, his daughter, and erred in so instructing the jury.

5. That he erred in not finding that upon the death of Hyder Ali Davie the Lansford lands did vest in fee under General Wm. Richardson Davie's will in Josiah Bedon, Sr., Hyder D. Bedon, and William Z. Bedon, by way of executory devise, defeasible on one or all of them dying without leaving issue male at their death or deaths, and he erred in not so instructing the jury.

6. That Josiah Bedon, Sr., died leaving issue male in the person of the present plaintiff in error, and the title to the Lansford lands became vested in him, said Josiah, absolutely in fee on the birth of the plaintiff in error, and his honor erred in not so finding and instructing the jury.

7. That his honor erred in finding that as to the plaintiffs in error the *ex parte* decree of Chancellor Job Johnston in chancery and at Chambers, in the case of Frederick G. Fraser, executor, *vs.* William R. Davie *et al.*, determined the right of possession to the Lansford lands and was *res adjudicata.*

8. That the limitation over to "the eldest issue male of my son, Allen Jones Davie," after the failure of issue male of issue male of both Frederick William and Hyder Ali Davie was too remote under the law of South Carolina, and his honor erred in not so finding.

ARGUMENT.

In this case the plaintiff in error, we contend, is entitled to a new trial, because of the manifest errors of the district judge herein specified.

The errors of the district judge in his findings of law and his instructions to the jury in the case of W. R. Davie *et al. vs.* James B. Heyward *et al.*, to which the plaintiff in error as an infant was a party and made formal answer by guardian *ad litem*, are many and manifest.

The title to the Lansford lands under the will of General William Richardson Davie, and the right of possession to the same, were adjudicated finally by the Constitutional Court of Errors of the State of South Carolina, May term, 1856, in the case of L. A. Beckham, trustee under the will of Hyder Ali Davie, against Wm. Davie De Saussure, executor of Frederick Wm. Davie, who was sued as tenant in possession of Wm. R. Davie, son of Allen Jones Davie, and reported in 9th Rich. Law Reports, 531. That was an action of trespass to try title—a statutory action enacted to take the place of the old English action of ejectment. In order to determine who had the right, it became necessary to construe the residuary clause of General Davie's will, which covers the devise of the Lansford lands. The question which is before this court is, Was not the district judge wrong in refusing to be governed by that adjudication under the well-established construction of the 34th section of the judiciary act?

We think he was wrong.

1st. Because it was an adjudication as to the right and title to a thing having a permanent locality—the real estate called Landsford—a matter immovable and intraterritorial.

Phillips' Practice, 192.
Swift *vs.* Tyson, 16 Pet., 1.
Henderson *vs.* Griffin, 5 Pet., 151.

2d. That by the construction of General Davie's will to determine the title to the Lansford lands, a rule of property was established, which has long been acquiesced in in South Carolina, and is a rule of property in that State to-day.

Jackson *vs.* Chew, 12 Wheat., 153.
Henderson *vs.* Griffin, 5 Pet., 151.

But the defendants in error claim that they were not parties to the action of Beckham *vs.* De Saussure, and are not bound by the adjudication therein, because as it will be contended by the defendants in error that their father, Dr. Wm. Richardson Davie, then in possession of Lansford, by his tenant, W. D. De Saussure, had died before the action of Beckham *vs.* De Saussure was commenced, to wit, the 9th of September, 1854.

It is very clear that the action was pending prior to March 18, 1850, four years before the death of their father, Dr. W. R. Davie; it was against Frederick G. Fraser, then sole qualified executor, and he dying, it was carried on against W. D. De Saussure, who qualified, and was the sole surviving executor.

Chancellor Job Johnston says, at page 35 of the transcript: "The trustees of Mrs. Bedon have also brought their action against the plaintiff, F. G. Fraser, executor in possession, to recover the land." By reason of the lapse of time it is impossible to say how the change in the same action was brought about, but it is presumed that the first executor having died, the action was continued against the survivor, who was qualified after the death of the first.

But the suit of Beckham *vs.* De Saussure being brought against the tenant in possession, W. D. De Saussure, the tenant under the lease of the father of defendants in error, they were not necessary parties, their father and they themselves being residents of the State of Alabama, the tenant was the only party who could be sued.

The practice in South Carolina was long settled with regard to the action of trespass to try title against a tenant in possession prior to the case of Beckham *vs.* De Saussure.

Crosby *vs.* Floyd, S. C. Rep., 2d Baily, 116.

That was an action against the tenant and the motion was to show that the title to the land was in the tenant's children (minors) and to allow them to come in and defend. The

tenant was decided to be the original defendant. It is there said, "The court possesses no power to admit new parties clothed with the privileges of original defendants." To the same effect, Kennedy *vs.* Campbell, 2 Treadways, S. C. Const. Rep. 760; Evans *vs.* Hinds, 2 Hills S. C. Law Rep. 527.

But this court will not go behind the adjudication of the Constitutional Court of Errors, the highest court in the State, to hunt for irregularities, but will take it for granted that all things were regular to make the judgment final and binding against all the world as to its particular subject-matter—the title to the land in dispute.

Practically all that was decided in Beckham *vs.* De Saussure was that Hyder Ali Davie died leaving issue male living at the time of his death; that the estate taken by him under General Davie's will was a fee-simple which was not defeated by the fact that his three grandsons, Josiah, Hyder D., and Wm. Z. Bedon, sons of his daughter, Julia Bedon, survived him. This court, under the authorities quoted, will accept as the law of this case what was so adjudicated in Beckham *vs.* De Saussure, and more especially that the term issue male being generic was as well satisfied by males coming through females as in the strict male line.

If those two matters of law had not been decided by the Court of Errors of South Carolina, and they were *res integra* before this court, it is impossible to see how a different decision could be reached.

Since the settlement of the title to Lansford by the decision of the Court of Errors in Beckham *vs.* De Saussure, a contingency has arisen under the provision of General Davie's will which had not then happened. The following is the provision of the last paragraph of the clause of the will under consideration:

"And should my son, Hyder Ali Davie, have issue male living at his death, and such issue male shall die without leaving issue male living at his death, then and in that case I

give and devise the said lands and real estate so devised and described above, should they so have vested under contingencies in such issue male, to the eldest issue male then living of my son, Allen Jones Davie, being of his sons living at my death, to him, his heirs and assigns forever."

It would seem that the intention of the testator in this clause is clear enough. He had given, by the previous words of this clause, fee-simple estates defeasible on one or both of his sons dying without issue male. Hyder Ali died first, 1848, and the fee vested at once in his issue male, Josiah, Hyder D., and Wm. Z. Bedon, dependent on Frederick William Davie dying without issue male. He so died. The fee then vested, directly under General Davie's will, in Josiah, Hyder D., and William Z., and not through their grandfather, Hyder A. Davie, who took a fee or through their mother, Julia A. Bedon, who took nothing under the will.

There is no other way of satisfying the words of the clause of the will under consideration, to wit, the words "land" and "real estate," "should they so have vested under the above contingencies in such issue male."

The devise to Josiah, Hyder D., and Wm. Z. Bedon, does not differ in conveying the fee to them, from that to their grandfather, Hyder Ali, except that the words "his heirs and assigns forever" are used. Under the provisions of the act of the General Assembly of 1824 (6th Stat., 237), such words are not necessary in a devise of land. The words of the statutes are as follows: "That no words of limitation shall hereafter be necessary to convey an estate in fee simple by devise, unless such a construction is inconsistent with the will of the testator, or implied."

The devise of the testator may be briefly stated thus. Estate in fee to Frederick William; if he should die without issue male, then to Hyder Ali; and if he should die without issue male, then over. It has been declared as the law of this case that the latter died leaving issue male; that defeated

the limitation over to the eldest issue male of Allen Jones Davie, under whom the defendants in error claim.

Upon the death of Hyder Ali, the fee vested at once in Josiah, Hyder D., and William Z. Bedon, defeasible on their dying themselves without leaving issue male.

The plaintiff in error stands before this court as the issue male of Josiah Bedon living at his death, and his birth made the estate absolute in fee in Josiah. Under this construction of the will, Josiah, at his death, was entitled to the one-third of Lansford certainly, and should Hyder D. and William Z. Bedon, one or both of them be dead without leaving issue male living at that time, in the first instance, the estate in fee is enlarged in the lands to the two-thirds interest; and in the second to the entire estate.

It is not known to the plaintiff in error whether or not his two uncles are dead or alive.

A new trial of this cause before the district court will demonstrate how that matter stands.

The estate devised to Josiah, Hyder D., and Wm. Z., was not a contigent remainder in any sense of the term, but the estate came to them by executory devise.

It is taken for granted that in construing General Davie's will in connection with the title to the land, the rules of construction adopted in South Carolina will be followed. Executory devises have been long since recognized in South Carolina as one way of devising real estate by will. It is the only method by which a fee can be mounted on a fee.

Allen *vs.* Fogler, 6th Richardson S. C. Law Rep., 543.
Andrews *vs.* Roys, 12th Richardson S. C. Law Rep., 543.

As part of the machinery of executory devises, it was established that the contingency upon which the limitation intended, was to take effect, should not be postponed longer than a life or lives in being and twenty-one years and nine

months after. The contingency on which this estate was to vest was the death of Hyder Ali Davie leaving issue male, and the death of Josiah Bedon leaving issue male, two lives in being.

It was therefore impossible for a second reason why the lands should go over to the defendants in error as heirs of the eldest issue male of Allen Jones Davie, because it could never go over unless Josiah, Hyder D., or Wm. Z. died without issue male living at the death of one or all of them. The plaintiff in error's birth was a complete bar to the recovery in the action of W. R. Davie *et al. vs.* James B. Heyward *et al.*

We do not consider the plea of *res adjudicata*, as raised in the reply of the defendant in error in this action, as a serious one—we mean where the *ex parte* decree of Chancellor Job Johnston at Chambers in Richland District and heard on the bill alone as determining anything. (See transcript, p. 33.) This plea is only good in case of a final judgment between the same parties and concerning the same subject-matter. The decree of Chancellor Johnston was a mere order refusing a temporary injunction. Chancellor Johnston would hardly after making a final decree upon the title to Lansford have sat in the Court of Errors and gravely hear and determine, as one of the judges of the court, the case of Beckham *vs.* De Saussure.

The case of Frederick G. Fraser *vs.* W. L. Davie was a bill in chancery in Richland District. Lansford was situated in Chester District. The action must be tried in the district where the land is located. (6 Stat., 211.)

It will be observed that in the case of W. R. Davie *et al. vs.* James B. Heyward *et al.* the plaintiff in error by guardian *ad litem*, put in his answer in which his rights were given in charge of the court, and it was the duty of the court to see to it that they were properly considered and protected, and it is his right to be heard before this court on all defences which

should have been made for him at the time. (Bank *vs.* Ritchie; 8 Pet., 128.)

It is quite clear that the limitation over to the eldest issue male of Allen Jones Davie, under whom the defendants in error claim, was not a contingent remainder, but could only take effect as an executory devise, as such under the law of South Carolina the limitation over was too remote.

A comparatively recent case in South Carolina has fully reviewed our law on that subject.

Mangum *vs.* Peisher, 16 S. C. Rep., 316.

The plaintiffs below, the present defendants in error, could only recover on the strength of their own title—that their father never had any title, and in this action they had no right to recover.

For the reasons assigned the plaintiff in error should have a new trial.

Argument on the Question of the Value of the Matter in Dispute.

If the view of the case upon which we rely is sustained by this court this question cannot arise, for the plaintiff in error will certainly recover the share of Josiah Bedon, his father, which will be the one-third of Lansford, a place containing over 3,000 acres, and sold in 1857 to C. B. Jones for $42,800. If Hyder and W. Z. Bedon are one or either of them dead without issue male, the share of Josiah will be enlarged so much the more. This controversy, however, was to try the title to 3,000 acres of land and involves the construction of the will of General Davie. The subject-matter of the action is of the value of $42,800 at least, or perhaps a great deal more, and comes directly under the authority of the cases of Stimson *vs* Dousman, 20 Howard, 461.

The question of the title to Lansford or the construction of General Davie's will is not divisible into parts as the defendants in error would have it. The question of value of the matter in dispute, as the defendants in error contend for, and as subdivided by their counsel, can only be ascertained by assuming that Lansford passed under the will of Hyder Ali Davie and became distributive among his heirs, male as well as female, which we deny.

Affidavits have been submitted by the plaintiff in error only out of abundant caution. They appear in the appendix to this brief. They were before this court on a motion to dismiss filed February 6, 1891, which motion was refused without prejudice.

The affidavit was then submitted and here repeated. It is shown that Lansford property has greatly increased in value by the possession of a magnificent water-power, and the value put upon one mill-seat and 20 acres by the defendant in error and his counsel, Edward McCrady, Jr., in an advertisement made by them was $32,000.

We also insert the affidavit of Bryon Holley, an expert hydraulic engineer, on the value of a like water power in South Carolina.

This very flaw in the title to Lansford is the reason, in our opinion, why the water-power has not been developed before this time. The proof of value offered by the defendants in error, which appear in the transcript, are only derived from deed between them in dividing Lansford, a mere family arrangement; and with the right of appeal in this case hanging over the land it is not to be supposed the value could be put very high.

We therefore respectfully submit that:

FIRST. The plaintiff in error does not admit many of the statements made by the attorney for the defendant in error, because they are not true in fact and contradict the record sent up to this court, and more especially the statements con-

tained in the paragraphs on page 9 of his brief in support of the motion to dismiss.

SECOND. Because the case cannot be heard upon this motion without going into the merits, as shown by the whole statement in said brief and argument.

The rights of the plaintiff in error came to him under the will of General William Richardson Davie, as construed and determined in the case of Beckham *vs.* De Saussure, 9 Richardson's L. Rep., 531. The father of the plaintiff in error is the Josiah Bedon mentioned in the special verdict in that case, which is a part of the transcript of the record in this case.

The action was for recovery of the Lansford Plantation, 3,076 acres, and $50,000 damages for the use and occupation of the place from 1856 to 1873.

The plaintiff below alleged in his complaint that the plantation was sold to C. B. Jones in 1857 for the consideration of $42,850. (See certified copy of the deed from L. A. Beckham, trustee, to C. B. Jones, hereto annexed, and marked Exhibit A.) This will make the value of the matter in dispute, with the damages, $92,800. There was no value to the land alleged in the complaint, but the best criterion of value is the sale as far back as 1857, but not of its value at the time of the granting of the writ of error. (See affidavit of S. P. Hamilton and copy of circular thereto attached, hereto annexed.)

But the plaintiff in error here contends that his right of appeal extends to the reversal of the judgment of the district court on the special verdict to the entire share of his father's (Josiah Bedon) estate, and that this court will not undertake to apply the statute of distribution of South Carolina to that right in order to reduce the plaintiff's in error interest below the jurisdictional amount.

The case relied upon by counsel on the other side, Parker, Jr., *vs.* Morrill, 106 U. S., 1, does not affect us.

In that case Parker, Jr.'s, interest was ascertained, and he commenced suit and alleged his interest to be one-twentieth in the land, and it was apparent on the face of the proceedings.

Our case involves the title to 3,076 acres of ground, the lowest valuation of which in 1857 was $42,850, and we invoke the rule laid down by this court in Stimpson *vs.* Dousman, 20 How., 461, and Bennett *vs.* Butterworth, 8 How., 124.

The effect, then, of a reversal of this judgment of the district court on the special verdict will be to send the case back for a new trial. One slice of it cannot be sent back, and the issue will be the title to a tract of land, whose known value is $42,850.

The interest of the plaintiff in error has not yet been determined by either the special verdict or the judgment thereon; they both are general and only passed upon the title to the property. But nothing was said as to how the Bedon heirs were to take, whether under the will of their grandfather Hyder Ali Davie, whether as his heirs general, or whether Josiah Bedon, father of the plaintiff in error, Hyder Davie Bedon, and William Z. Bedon, being the male issue of Hyder Ali Davie, living at his death, took the Lansford estate to the exclusion of their sisters and their brothers who were born after the death of Hyder Ali Davie.

If this court should so decide, it would make a great difference in point of value. Josiah Bedon, the elder, upon that contingency, would have taken one-third, and his share would have been of the value of something over $14,000 in 1857.

The only valuation submitted by the defendant in error is his return for taxes, State and county, 3,000 acres of land at $18,195. Undervaluation of property by tax-payers is one of the growing evils now prevalent in South Carolina.

The defendant in error is making evidence for himself, and may it not be said that he made this undervaluation with his eye to this appeal, which was suspended over this case from 1873 to 1887. May it not be his object to show that the

value of the plaintiff's in error interest would thereby not exceed $2,000.

In this case the value of the matter in dispute cannot be considered until the case is heard on its merits. In the case of Semple *vs.* Hagar, 4 Wal., 431, it is said: "In many cases the question of jurisdiction is so involved with other questions that the court cannot eliminate it without a careful examination of voluminous records and passing on the merits. When this occurs the motion will not be granted, but the question of jurisdiction will be heard on the final argument on the merits.

S. P. HAMILTON,
MILLS DEAN,
Attorneys for Plaintiff in Error.

APPENDIX.

IN THE SUPREME COURT OF THE UNITED STATES.

JOSIAH BEDON, *Plaintiff in Error,*
vs.
W. R. DAVIE, *Defendant in Error.*
} No. 563.

Personally appeared Samuel P. Hamilton, who being sworn, says that he has been living in the county of Chester, in the State of South Carolina, for twenty-six years, and knows the Lansford plantation quite well; that since its sale by L. A. Beckham to C. B. Jones for $42,850, in 1857, and of late years, the property has become very much enhanced in value by a water power, which was not considered at all in said original sale; that said water power and the islands belonging to the property, have within the last five years developed a marketable value. It extends, with a succession of shoals, for the distance of a mile, with a claimed fall of over fifty feet; that what adds to the value of the water power is a canal, built by the State of South Carolina, with expensive

locks and masonry, about the year 1800, for the purposes of navigation around the falls; that said canal for such purposes proved a complete failure, and was abandoned; that said canal runs through the Lansford plantation for a distance of two miles, and the title has, as claimed by the defendant in error, reverted long since, either by a provision in the grant to the State, made by General Davie, or by nonuse for more than eighty years; that this canal, as deponent is informed and believes, can be utilized for developing said water power at a great saving of cost; that recently Henry W. Becksmith, of England, representing an English syndicate, has purchased a similar water power, with a like canal around the falls, about seven miles below the Lansford Falls, with 2,445 acres of land, at $50,000.

That the defendant in error, with the other parties interested in the Lansford property, including Edward McCrady, Jr., the attorney for defendant in error, put a value on the water power and twenty acres of land at $32,000, by a circular generally distributed in 1887, signed by both these parties, a certified copy of which is hereto annexed, which goes to show that the true value of the property-land and water power will stand, as to value, as follows:

Value of land in 1857.....	$42,850
" " water power, 1887.....	32,000
	$74,850

Share of Josiah Bedon, the plaintiff in error, $2,845.

That even upon the subdivision of the original one-ninth of Josiah Bedon's (the elder) part, into three, gives the plaintiff in error over the jurisdictional amount, to wit, $2,845.

S. P. HAMILTON.

Sworn to before me this 19th day of February, 1891.

JNO. T. ELLIOTT,
Notary Public.

CIRCULAR.

The undersigned are owners of the plantation of the late Gen. W. R. Davie, situate on the Catawba River, Chester County, S. C., on which are the well-known Lansford Falls (29 feet in 2,000 yards), affording one of the best water power and manufacturing sites in the State. The situation, which is healthy, is in the midst of a rich and extensive cotton region, in convenient distance of the Chester and Cheraw Railroad, with which it can be connected by a branch of that road. It is also open to river communication by cotton boats above to C. C. and A. R. R., a distance of 18 miles. The falls are 22 miles from Chester, 15 from Rock Hill, and 8 miles from Lancaster.

Desiring to develop this property, we make the following propositions to any person, persons, or company who will establish a cotton factory upon the same, with a capital of $300,000.

Prop. 1st. We will erect a two-story brick building, 280 feet long and 68 feet wide, per plans and specifications in the office of Jones & Robertson, Rock Hill, S. C., said building to have a capacity of 12,480 spindles, to be supplied with a water power of 300 horse, said power to be developed and maintained by us per plans in the office of Jones & Robertson, and will give 20 acres of ground convenient thereto for tenement houses and other necessary purposes, for the sum of $60,000.

Prop. 2d. Or if such person, persons, or company prefer to erect the factory building, we will give the right and 20 acres of land and supply the same with 300 horse power as above for $32,000.

Prop. 3d. Or, if preferred, we will give to such person, persons, or company the 300 horse power site and land as above, provided that such person, persons, or company will erect a factory thereon of the foregoing capacity and dimensions and develop the water power as proposed by us in propositions first and second.

Prop. 4th. We will give the refusal of 200 or 400 more horse power to such person, persons or company within the next five years on such terms as may be agreed upon.

Prop. 5th. We will put the site in railroad communication for $10,000.

T. C. ROBERTSON,
ALLEN JONES,
Rock Hill, S. C.
WM. R. DAVIE,
Landsford, S. C.
EDWARD McCRADY, JR.,
Charleston, S. C.

I, John C. McFadden, clerk of the court of common pleas and general sessions in and for the county of Chester and State of South Carolina, do hereby certify that the foregoing contains a true and correct copy of a circular printed in the brief for the Supreme Court in the cases of Mary F. McCrady *vs.* Allen Jones and others, and Edward McCrady, Jr., *vs.* W. R. Davie *et al.*, as appears from a duplicate of said brief now on file in my office.

Witness my hand and seal of the court this 18th February, 1891.

JOHN C. McFADDEN,
Clerk C. C.

EXHIBIT "A."

THE STATE OF SOUTH CAROLINA,
Chester District.

Know all men by these presents, that I, Lewis A. Beckham, trustee of Mrs. Julia A. Bedon and her children under the will of her late father, Hyder A. Davie, and by virtue of the authority conferred upon me by the same, and also by virtue of the decree of the Court of Equity in the case of Lewis A. Beckham, trustee, *vs.* Churchill B. Jones, Julia A. Bedon, Richard S. Bedon, Josiah Bedon, Hyder D. Bedon, William L. Bedon, Julia Bedon, Jane P. Bedon, Sally Boykin Bedon, Archibald Stobo Bedon, Richard Bedon, Robin Carr Bedon and W. F. De Saussure (see record in the office of court [Equity] for Richland District), and in consideration of the sum of forty-two thousand eight hundred and fifty dollars to me paid, or secured to be paid by Churchill B.

Jones, of Chester District in the State aforesaid, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell, and release unto the said Churchill B. Jones, and his heirs and assigns, forever, all that plantation or tract of land situate at Lansford, in the district of Chester and State aforesaid, composed of several grants or parcels, containing three thousand and seventy-six acres, bounded east by the Catawba River; bounded on the north by lands of H. J. Culp, by lands formerly estate of F. W. Davie, now in the possession of Col. Cad Rives, also by lands of Col. Cad Rives, formerly Col. Pride; also by lands of Col. H. J. Pride, bounded on the west by land of Col. H. J. Pride, Wm. McMillen, by lands now owned by Wm. Beckham, formerly McMillen, by lands of Andrew Crossett, and lands formerly of the estate of F. W. Davie, since sold to John H. Stroud, and also by lands of R. H. Fudge and Thomas Walker; bounded on the south by lands of Rebecca Walker and Miss Jane Walker, to the Catawba River, including the island in said river, known as the Davie Island, and belonging to the late General Davie, the same being all the lands and plantation formerly owned by the late General Wm. R. Davie and of which he died seized and possessed, the boundaries and lines of which are more particularly laid down in a plat thereof made by Charles Boyd, D. S., dated May 17, 1813, and now constitute a part of the record in the clerk's office at Chester C. H., case of Lewis A. Beckham, Exer., *vs.* W. D. De Saussure, to which plat reference may be had, and is hereby had, as constituting part of this deed; together with all and singular the rights, members, hereditaments, and appurtenances to the said premises belonging, or in in any wise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the said Churchill B. Jones, his heirs and assigns forever. And I do hereby bind the trust estate confided to me by the will of Hyder A. Davie, deceased, to warrant and forever defend all and singular the said premises unto the said Churchill B. Jones, his heirs and assigns, against myself as trustee aforesaid and my heirs and the *cestui que trust* as aforesaid and against all other person or persons whomsoever, lawfully claiming or to claim the same or any part thereof.

Witness my hand and seal this first day of June, one thousand eight hundred and fifty-seven and in the eightieth year of American Independence.

L. A. BECKHAM, [L. S.]
Trustee.

Signed, sealed, and delivered in the presence of, the words "*myself, as trustee as aforesaid, and*" having been erased before execution.

A. Q. DUNOVANT.
JAMES HEMPHILL.

SOUTH CAROLINA,
Chester District:

Personally appeared James Hemphill and made oath that he saw L. A. Beckham sign, seal, and deliver the above deed for the uses and purposes therein mentioned, and that he, with A. Q. Dunovant, in the presence of each other, witnessed the due execution thereof.

JAMES HEMPHILL.

Sworn to before me May 2, 1859.
WH. H. ANDERSON, *Clk.*

Recorded May 2, 1859.
Delivered to C. Rives for C. B. Jones, May 16, 1859.

STATE OF SOUTH CAROLINA,
County of Chester:

I, John C. McFadden, clerk of the court of common pleas and general sessions and register of mesne conveyance of the county of Chester, in the State aforesaid, do hereby certify that the foregoing three pages contain a true and correct copy of a deed from Lewis A. Beckham, trustee, to Churchill B. Jones (recorded in Book "K K," No. 203, pages 312 and 313), as appears from the record now on file in my office.

In testimony whereof I have hereunto set my hand and the seal of the court, at Chester Court House, South Carolina, this the 16th day of February, A. D. 1891.

[L. S.] JOHN C. McFADDEN,
Clerk C. C. Pleas and Gen'l Sessions and R. M. C. Chester County, S. C.

I, J. B. Kershaw, judge of the circuit court of the State of South Carolina for the fifth judicial circuit, do hereby certify that the above attestation of John C. McFadden, clerk of the court and register of mesne conveyance for Chester County, is in due form and made by the proper officer.

J. B. KERSHAW, *Judge.*

FEBRUARY 18, 1891.

STATE OF SOUTH CAROLINA,

City of Columbia:

Personally appeared Byron Holley, who, being sworn, says that by profession he is a hydraulic engineer, and has been engaged in such business since 1851. For several years past he has been engaged in developing the water-power on the Broad River, at Columbia, South Carolina. That over the ground where the present canal and water-power has been located there was formerly an old canal for the purpose of navigation built in the distant past by the State. That since my connection with this work it has cost $260,000 to complete it, the power amounting to that of eleven thousand horses, which will be for sale at ten dollars per horse power per year, and when taken up will yield and annual income after paying all expenses of about eighty thousand dollars.

That deponent has read a circular signed by T. C. Robertson, Allen Jones, W. R. Davie and Edward McCrady, Jr., printed in a case in the Supreme Court of the United States, entitled Josiah Bedon, plaintiff in error, against William R. Davie, *et al.*, and also the affidavit of S. P. Hamilton, descriptive of a water-power on the Lansford Plantation, in Chester County, South Carolina, and believes that the possibility that such water-power might be developed in the near future would greatly enhance the value of the property adjacent.

[L. S.] BYRON HOLLEY.

Sworn to before me this 23d day of February, 1892.

[SEAL.] JOS. W. MULLER,

Notary Public, South Carolina.

JAMES H. McKENNEY
CLERK

THE SUPREME COURT OF THE UNITED STATES.

JOSIAH BEDON, PLAINTIFF IN ERROR.

vs.

WILLIAM R. DAVIE, ET AL, DEFENDANTS IN ERROR.

OCTOBER TERM, 1891—NO. 210.

ARGUMENT FOR DEFENDANTS IN ERROR, BY EDWARD McCRADY JR. 1

The defendants in error renew, under leave of the Court, their motion to dismiss the writ of error as not within jurisdiction of the Court because it does not appear that the value of the matter in dispute exceeds $2,000, the limit of the jurisdiction at the time of the entry of the judgment—but the position assumed by the plaintiff in error in his brief upon the motion to dismiss necessitates an argument involving to a considerable extent the merits. We will therefore proceed to discuss the whole case. 2

STATEMENT OF CASE.

The circumstances of this case are certainly sufficiently remarkable to have a passing notice. The Court is now called upon to pass upon a will executed more than seventy-two years ago, a will which has been in force more than seventy years, the litigation of which commenced more than forty years ago, and the judgment therein, which the writ of error in the case now brings up for review, entered eighteen years ago. This Court is now called upon, at this late day, 3

to turn over these musty pages at the instance of *one* of the fifteen persons who have been entitled, if he is, but all the others of whom have long since acquiesced in the decision below, and this one person who now appeals to the Court is entitled, if at all, to but one eighty-first part of a plantation of 3,000 acres.

The judgment in the case turned upon the construction of
4 the will of General William R. Davie, an officer of the Revolutionary war of fame, Governor of North Carolina and Minister to France; but what is of more consequence in this matter, he was also, as appears in the record, a lawyer of great distinction.

At the time of the death of General Davie, in 1820, his family consisted of the following persons:

1. *Allen Jones*, a son, born 16th February, 1785, married, and who then had issue, three sons and one daughter; the eldest of
5 whom was *William Richardson*, the father of the defendant in error.

2. *Hyder Alli*, a son, born 29th Oct., 1786, married, and who had issue, one daughter, *Julia*, (who afterwards married Richard S. Bedon, and became the mother of Josiah Bedon, the father of the present plaintiff in error, and of other issue, male and female.)

3. *Mary Hayne*, a daughter, born 25th June 1790; then unmarried.

4. *Sarah Jones*, a daughter born 12th March, 1793, then
6 the wife of William F. DeSaussure, with issue, two daughters and one son, *William Davie DeSaussure*.

5. *Martha Rebecca*, a daughter born 13th October, 1796, then unmarried.

6. *Frederick William*, a son born 11th April, 1800, then unmarried.

With this family around him Gen'l. Davie made his will in which he devised the lands in question—not to speak as critically as we must do presently, we may here say—first to
7 his youngest son and child *Frederick William* in fee; but in case he died without "*issue male*," to his second son, *Hyder*

Alli in fee; and in case he died without "*issue male*," then to the eldest "issue male" of *Allen Jones*.

It so happened that of the sons, *Hyder Alli* first died, and left no son, but grandsons by his daughter; and *Frederick William* after enjoying the estate for some thirty years died also without issue; and that thereupon *Dr. William R. Davie*, the eldest issue male of Allen Jones, the father of the defendants in error, entered upon the lands with the full knowl- 8
edge and consent of all the family as the unquestioned owner under his grandfather's will, and held them for four years when he died in undisputed possession.

A doubt it is true had been suggested by a stranger shortly after he had entered, whether the *grandsons of Hyder Alli* through a daughter had not fulfilled the descriptions "*issue male*," and so were entitled to the estate; and upon this doubt proceedings had been instituted by Frederick G. Fraser, as executor of Frederick W. Davie, to whom Dr. William R. Davie had leased the lands, asking to be re- 9
lieved from the lease on the ground of mistake, and to these proceedings as the special verdict finds Mrs. Julia Bedon and her sons including Josiah Bedon the father of the plaintiff in error were made parties, and by amendment the trustees under a will of Hyder Alli had been also made parties. But the decree in these proceedings had sustained the lease, confirmed Dr. Davie's title, and dismissed the bill. From this decree a formal notice of appeal had been given, but abandoned and Dr. Davie had lived and died in possession with the acquiescense of all parties concerned. 10

Sometime after the death of Dr. Davie, however, and while the present defendants in error were infants of very tender years residing with their widowed mother in Alabama, an action in ejectment was brought by Lewis A. Beckham and William F. Davie as trustees under Hyder A. Davie's will against William D. DeSaussure who had qualified as executor of Frederick William Davie, in the place of Frederick G. Fraser, who had in the meanwhile died. Under a judgment in this case in which the defendants in error were in no wise represented the Bedons obtained possession in 1856. 11

In 1872 the present defendants in error, as citizens of Ala-

bama, commenced proceedings in the United States Court against those who claimed under the possession thus obtained, and recovered the property in 1873. It is from the judgment of the United States District Court of the Western District of South Carolina, in which these lands lay, that this appeal is at this late day taken.

In taking up the record in this case, the facts which must
12 first strike the Court are that this is a writ of error from a judgment entered in August 1873, now more than eighteen years ago; the writ not having been sued out until December, 1888, more than fifteen years after its entry: and that of all the fifteen defendants against whom it ran, but one now appeals Four of these it is true had before the entry of the judgment conveyed whatever interest they had to one of their co-defendants, Sallie B. Heyward, but this left ten defendants acquiescing in the judgment against one who at this late hour appeals, (Record pp. 63–66.) This one it is true is within—
13 just within the limit of his time, he having become of age on the 21st December, 1885, and suing out his writ on the 23d November, 1887, (Record p. 76.) It is said in the petition signed by Mr. S. P. Hamilton, attorney, that James B. Heyward and wife sued out a writ of error and then abandoned it, having come to some compromise with William R. Davie for the plaintiff below, which compromise was against the interest of the plaintiff in error; but it was one which was at least acquiesced in at the time by the plaintiff's mother, and by all the other adults, and by Robin Carr Bedon when he came of
14 age, and by the plaintiff's sister Alice when she came of age—so that of all the parties to this cause, this one alone has thought it worth while to attempt to set aside the judgment. But he has the right to do so and we proceed to meet his appeal.

The Court will perceive that apart from the merits of the original question as to the construction of the will of General Davie, the defendants below plaintiffs here set up in their answer the plea of *res adjudicata* in their favor, under a cer-
15 tain judgment in the cause wherein Lewis A. Beckham and William F. DeSaussure were plaintiffs, and William D.

DeSaussure was defendant, entered 29th September, 1856. (Record pp. 12–14.) And that to this defence the defendants in error replied that on the contrary it was *res adjudicata* in their favor under a prior decree of March, 19, 1851, wherein Frederick G. Fraser, executor of Frederick William Davie was plaintiff, and William R. Davie, their father, Richard Bedon and Julia Bedon his wife, and their children, including Josiah Bedon the father of the present plaintiff in error, though whom he claims, were defendants. (Record pp. 16—17.)

16

Res Adjudicata.

1. The case of *Davie v. Fraser* is *Res adjudicata* in favor of the defendants in error.

2. The case of *Beckham v. DeSaussure*, relied on by the plaintiff in error as *Res adjudicata*, was not properly made and does not bind the defendants.

17

We shall address ourselves to this question at once, because if the defendants in error are correct that the decree in *Fraser Exor. vs. Davie*, of 19th March, 1851, was *res adjudicata* against Josiah Bedon, the father of the plaintiff in error, the cause will, we apprehend, end there and save the Court the labor of construing the will.

The special verdict in this case (*Record p. 20*,) finds that Frederick William Davie during his last illness sent for Dr. William R. Davie, then a resident of Alabama, to come to him at Landsford, to arrange with him for the continued occupation of the lands by his widow after his death. That Dr. William R. Davie did accordingly make a journey to South Carolina but did not reach Landsford until after his uncle's death; that upon the arrival of the said William R. Davie from Alabama, after the death of the said Frederick William, he entered upon and took possession of the said lands, and in compliance with his uncle's wishes, leased the same to Frederick G. Fraser the brother of the widow and the qualified executor of Frederick William, for a term of ten years, at an annual rental of twenty thousand pounds of ginned cotton.

18

19

That on the 28th June, 1850, Frederick G. Fraser filed a bill in equity, praying to be relieved from this lease on the ground of mistake as he had since been advised that the title to the said lands was not in the said William R. Davie, but either in the heir-general of Hyder Alli, or in the grandsons of Hyder Alli, the sons of Mrs. Julia Bedon.

The verdict finds especially that to this suit William R.
20 Davie, Richard Bedon and Mrs. Julia A. Bedon, and their sons *Josiah Bedon*, (the father of the plaintiff in error,) Hyder D. Bedon and William Z. Bedon and Lewis A. Beckham and William F. DeSaussure, trustees under the will of Hyder A. Davie, *were made parties* and the bill taken *pro confesso* against all the defendants.

The verdict finds also that the cause came on to be heard before Chancellor Johnston, who on the 19th March, 1851, by decree dismissed the said bill; that notice of appeal from this decree was given, but the appeal was not prosecuted and
21 finally abandoned, and that the decree remains unreversed, and that the said William R. Davie remained in possession of the lands by his tenants until his death which took place on the 4th January, 1854.

Josiah Bedon the father of the present plaintiff in error having been a party to this cause of *Fraser vs. Davie, et.al.*, in which the very questions the plaintiff is now agitating were decided, he can claim nothing through his father against this decree which still remains unreversed, it is as to him *res adjudicata*.

22 This we submit concludes the case. The plaintiff in error is estopped by the decree against his father to whom he is privy, and through whom he claims. But if the court desires to hear argument upon the other questions in the case, then we will first meet the claims of the plaintiff in error, that the defendants are concluded by his judgment in *Beckham ana DeSaussure, vs. DeSaussure.*

2. The case of Beckham & DeSaussure v. DeSaussure examined.

23 We submit that there were no proper parties in that case and that it was a nullity, and that had there been, the

judgment therein could not affect the defendants in error, as they were not made parties in any way thereto.

a. The writ ran to *attach* the body of *William D. DeSaussure* the defendant, (*folio 102,*) and the declaration alleged that William D. DeSaussure *was attached* to answer to "etc."

The form of the writ indicates that the action was a personal one against William D. DeSaussure in his individual character, and not in a representative one, for if it had been against him as executor it would have run "to summon," and not "to attach." *Tidd's Practice, p. 48, s. 11; Chitty's pleadings, vol. 2, p. 34; Read's Assistant Pleader, 291; Conner's History of a Suit at Law, p. 10.* The writ does not allege that he was executor, and the declaration alleges a personal trespass by him; a trespass of which he could only have been guilty in his own personal character, and not as executor. How then could a judgment against William DeSaussure, an entire stranger to the defendants in error, bind them.

It is true that the special verdict in the case of *Beckham & DeSaussure v. DeSaussure* finds that F. G. Fraser continued in possession of the plantation, cultivating the same until his death on the 1st February, 1852, "after which period the defendant, as executor of F. W. Davie, under the lease took and yet holds possession," (*Record p. 47*) but this was denied by the defendants in error on the trial below, and the special verdict in this case finds nothing of the kind, but only that upon the death of Frederick G. Fraser "William D. DeSaussure, who had been named as executor in the will of Frederick William Davie, qualified thereon."

When looking at the lease, too, it will be seen that it was to Frederick G. Fraser, ex'r, without any words of succession, (*Record, p. 47, f. 100*) and so passed to his own representative, if to any one, and not to any other executors of F. W. Davie.

But even admitting for argument that William D. DeSaussure was a tenant under that lease and was a proper party defendant in that cause, a judgment against him could

not bind the defendants in error who were not made parties to it.

At common law a single verdict in ejectment would have bound neither party, and it was questioned whether under the action of trespass to try title, which was substituted by statute of 1791, a single verdict was yet binding on a defendant. It was held that it would; that the Act of 1791
28 was intended as a substitute in South Carolina for the former mode of proceeding. *Thomas v. Geiger, 2 Nott & McCord, 528.* But it was expressly held also in *Samuel v. Dinkins, 12 Richardson's (Law) 174,* Judge Wardlaw delivering the opinion of the Court, that while a tenant as a privy in estate will be concluded by acts of his landlord on grounds equivalent to such acts, the landlord claims not under the tenant, and should not suffer by his default or weakness. And in that case the landlord was held not to be bound by the judgment though he was present and assisted the tenant at the trial, he
29 not having been made a party to the record.

The same rule was declared by the Courts in *Chirac v. Reinicker, 2 Peters, 623,* and *11 Wheaton, 297,* and is laid down in *Sedgwick & Wait on Trial of Title to Land, Sec. 537*

b. But who were the plaintiffs in this case of *Beckham & DeSaussure vs. DeSaussure?*

The writ and declarations show that the defendant was
30 attached to answer to *Lewis A. Beckham and William F. DeSaussure* survivors of Lewis A. Beckham, William F. DeSaussure and Frederick William Davie, *trustees under the will of Hyder A. Davie.*

Now Hyder A. Davie had died before Frederick William Davie, to wit, on the 13th June, 1848, and by his will he had devised and bequeathed his whole estate real and personal to F. W. Davie, Lewis A. Beckham and W. F. DeSaussure in trust for the sole and separate use of his daughter
31 Julia Bedon, and after her death in trust for her children. (Record p. 74, *folio* 161.)

From the time of Coke the intention of the testator has been the pole star in the interpretation of wills, and nothing can be more certain from the terms of this will than that the testator was not disposing of any property to be derived after Frederick William's death, for he devised all his estate to Frederick William as his first trustee. It is clear therefore that he had no idea of disposing of this property when he made his will, and as to it, even if he had had the power 32
to dispose of it, he had died intestate; and so it would go to his heir general if there was a disposable interest of it in him

But there was none such. It was not until 1850 that real estate in South Carolina purchased or otherwise acquired after the making of a will passed under it The *Act of 1858 12 Vol. Stat. at Large, 700*, is as follows:

"1 Be it enacted by the Senate and House of Representatives now met and sitting in General Assembly, and by the authority of the 33
same, that from and after the passing of this Act real estate purchased or otherwise acquired after the making and publishing of last wills and testaments shall pass by and under the same, and to the same extent as personal estate now does."

Prior to this, after acquired *personal* property would pass under a will, under a special Act of 1808, but even in that case there must have been words in the will sufficient to cover it for the purpose. *Dennis vs Dennis, 5 Rich. Law, 468.*

34

The will of Hyder Alli was made on the 25th March, 1847, (folio 169) and he died on the 13th June, 1848. So then he had no power to dispose of this property which then belonged to another and had not come to him. Hyder Alli had therefore neither the will nor the power to dispose of the Landsford plantation.

The only allusion to this difficulty in either of the cases which were before the courts of the State is that in Chancellor Johnston's decree in which he says (*folio 81*) that it 35
was not necessary in the case as presented to him to deter-

mine whether taking under the description of heir Mrs. Bedon took as a purchaser and independently of her father's will or as heir through him in such a sense as to imply in him a power of disposition to such an extent as would warrant the application of his will to the subject.

But it has become material in this appeal to do so for two reasons. (1.) Because if the property did not pass under
36 Hyder Alli's will then the trustees under it had no interest upon which to found the case of *Beckham & DeSaussure vs. DeSaussure*, relied upon by the plaintiff in error as *res adjudicata*, and that case was a mere nullity.

And (2.) Because if the property did not pass under Hyder Alli's will then the interest of the plaintiff in error is derived solely as the heir of his grandmother, Mrs. Julia Bedon, and not under the trusts of that will ; in which case he is entitled, as we shall show, to but one 81st part of the property, and upon no possible valuation can he sustain the jurisdiction of the
37 Court.

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1. If the property did not pass under Hyder's will, the trustees had no right to bring suit.

First then, if as we have shown that the plaintiff in error derives his title through his grandmother and not under the will of his grandfather, Hyder Alli Davie, what right had the trustees, Beckham and DeSaussure, to bring any action
38 in the matter whatever? Clearly none. They were mere volunteers, strangers who had no interest in the property, and the proceedings by them was a mere nullity. So then there was neither a proper plaintiff nor a proper defendant in the case of *Beckham and DeSaussure vs. DeSaussure* The question, it might be supposed, under a Davie will, and about a Davie's right would have some *Davie* in the case. But there was none. It was a mere fictitious suit.

Sir Walter Scott mentions in the introduction to the Talisman as curious a playbill which is said to have announced the tragedy of Hamlet, the character of the Prince of Denmark being left out. But the tragedy of *Beckham*
39 *and DeSaussure vs. DeSaussure* is still more curious, for in this play there was neither the Prince nor even the ghost.

2. If the property did not pass under Hyder's will, then this Court has no jurisdiction, for the value of the interest of the plaintiff in error is too small.

For if the property did not pass under Hyder Alli's will, then the interest of the plaintiff in error is derived solely as heir of his grandmother, Mrs. Julia Bedon; and Mrs. Bedon dying intestate under the law of distribution in South Carolina, her husband took one-third of her estate, * and as he was a party to this cause and has not appealed, his share of it is to be eliminated, and the other defendants in the case below, including the plaintiff in error here, were entitled only to two-thirds of it,—and Josiah Bedon the father of the plaintiff in error to one-ninth, as there were nine children of Mrs. Bedon. That is, the father of the plaintiff in error was entitled, to but 1/9 of 2-3d—1/27 of the whole. This 1-27th of the whole was shared between the present plaintiff's mother, Mrs. Wysong, and her two children Alice and Josiah (the plaintiff in error). But neither Mrs. Wysong nor her daughter Alice appealed, and the decree below stands as to them. The interest of the plaintiff in error, the interest which only is now before the Court, is 1-3d of 1-27—1-81: one eighty-first part of the property. Which to give the Court jurisdiction must be worth at $2,000 a share, $162,000; a sum more than twice as much as the most extravagant valuation, which the plaintiff in error has put upon it.

In the brief of the plaintiff in error, to our motion to dis-

*Statute Distribution in South Carolina. A. A. 1791, Vol. V. 162. General Statutes 1882, § 1845.

1st. If the intestate shall leave a widow and one or more children, the widow shall take one third of the said estate, and the remainder shall be divided between the children, if more than one; but if only one, the remainder of the estate shall be vested in that one absolutely forever.

* * * * * * * *

10th. On the death of any married woman, the husband shall be entitled to the same share of her real estate as is herein given to the widow out of the estate of her husband, and the remainder of her real estate shall be distributed among her descendants in the same manner as is heretofore directed to be distributed in the preceding clauses.

miss the writ, the position is suggested that only the male issue of Hyder Alli, living at his death, took under their grandfather's will, *i. e.*, Josiah (the father of the plaintiff in error) Hyder D. and William Z. Bedon, and that, therefore, the plaintiff's interest is really one-ninth of the whole. This was the theory under which the first proceedings were taken in 1851, but it was abandoned as soon as any consideration
44 was given to the case, and the trustees under Hyder Alli's will were made parties as representing all the children of Mrs. Bedon. The short and simple answer to this theory is that there was no devise whatever under General Davie's will to the "issue male" of Hyder Alli. The devise to Hyder Alli upon the failure of 'issue male' of Frederick William was to Hyder Alli Davie *to "him and to his heirs forever."* So that if Hyder Alli took it went to his heirs general. And so Chancellor Johnston held (*Folio 81*) and this is the view in which the case of *Beckham & DeSaussure vs. DeSaussure*
45 set up as a *res adjudicata* was instituted and maintained.

It can scarcely be necessary for us in this connection to reply to the preposterous proposition of the plaintiff in error that the damages of $50,000 asked for in the declaration for the use of the property from 1856 to 1873 are to be added to the value of the property in dispute when the special verdict agreed upon by all parties to the cause on the trial found the damages at the nominal sum of $5 (p. 22, f. 47,) and in the face of his own petition for a writ of
46 error in which he states that the special verdict was in effect that the plaintiffs should recover the lands in dispute *without damages.* (P. 77, f. 175.)

It can be scarcely more so to reply to the affidavit of the plaintiffs attorney that a water power upon another place has been sold for $50.000. Nor to the offer of certain parties to sell this for $32.000. The short answer to this is the story of the boy who informed his father he had most sold the pig. How is that asked his father? Well, said the boy, I asked a
47 man to buy the pig and the man said no.! Now argued the boy, if the man had said yes, he would have sold the pig. So

here the attorney introduces evidence of an offer to sell which nobody would take.

There is nothing new in the value of the water power on the place. As appears by the affidavit of C. J. Pride filed with this argument, the water power has been an item of value for nearly seventy years. Now is it necessary to answer the unworthy insinuation that the assessment upon the property has been made upon returns of one interested in keeping down its value? The assessment is fixed by officers of the law, not by the person who returns it. 48

It is said in the Brief of the plaintiff in error that the case of *Parker, Jr., vs. Morrill, 106 U. S., 1*, does not affect them as in that case Parker's interest was ascertained and alleged by him and apparent on the face of the proceedings. It just as plainly appears on the face of these proceedings that the only claim the plaintiff can possibly make is to the aliquot part or share to which he is entitled as one of the distributees of his father in any part or share to which he was entitled, to wit: one-third of one-ninth of either the whole or of two-thirds thereof. The plaintiff in error will scarcely be bold enough to claim either (1) that he is entitled to the whole property as the only appellant, or (2) that the interest of all the other heirs are entitled to the benefit of his appeal, though all long since barred by the statute. But it is needless to argue the point. It has been again recently decided at the last term of the Court in *Miller vs. Clark, 138 U. S.* in which the Court says: "As the total amount involved is only $5,377.83 and the interest of the plaintiff in that sum is under the will only one-sixth thereof, or $896.30½ the Court has no jurisdiction of his appeal." This rule is well settled in this Court. *Little vs. Bowers, 134 U. S. 547; Smith Middling Purifier Co. vs. McGroaty, 136-237.* 49 50

If this were a suit in partition it has been held by this Court in the case of *Mc Carthy vs. Provost, 103 U. S. 673*, that the value of the undivided part in controversy would determine its jurisdiction. It is only his undivided part the plaintiff in error could recover in this case. 51

We feel assured that the Court before it reaches this part of our argument will have found the plaintiff in error estopped by the *res adjudicata* of *Fraser vs. Davie* decided by Chancellor Johnston. But if it should have followed us thus far we again submit as a bar to any further consideration of the case that the Court is without jurisdiction to proceed, inasmuch as it is manifest that the value of the
52 interest of the plaintiff in error is below the jurisdictional amount.

Construction of the Will.

But if we must argue this case upon the merits of the original questions, let us read carefully the clause of the will which has produced all this litigation, word by word, but broken into paragraphs for convenience. It is in these words:

"Item, I give and devise all the rest and residue of my lands and
53 real estate in the State of South Carolina, to my son, Frederick William Davie, *to him and his heirs forever*, subject however to the incumbrances in this will. And is my will, and I do hereby devise that *in case of the death of my said son, Frederick William, without issue male, living at the time of his death*, then in that case I devise the lands and real estate so devised as above, to the said Frederick William, to his brother *Hyder Alli Davie to him and to his heirs forever*, subject however to the incumbrances in this will mentioned.

"*And in case the said Hyder Alli Davie shall die without issue male, living at the time of his death*, then in that case I give and devise the said lands and real estate *to the eldest issue male, of my son Allen Jones Davie, then living, when such event shall take place; that is of the sons he may have*
54 *living at my death*, to him and to his heirs forever subject to the incumbrances mentioned in this will

"And should my said son, Frederick William have issue male and such issue male, of my said Frederick William, should or shall die without issue male, living at the time of his death then and in that case it is my will and I do devise the lands and real estate so devised and described above, first to my son, Hyder Alli Davie and his heirs, and then to the eldest issue male, living at the time of Allen Jones Davie *under the same limitations and on the same contingencies* and in the same order and manner *as above directed and devised should my son Frederick William die without any issue male, living at the time of his death* to them and their heirs forever.

"And should my son Hyder Alli Davie have issue male, living at
55 the time of his death, and such issue male, shall die without leaving issue male, living at his death, then in that case I give and devise

the said lands and real estate so described and devised above, should they so have vested under the above contingencies in such issue male, to the eldest issue male, then living of my son Allen Jones Davie, *being of his sons* living at my death, to him, his heirs and assigns forever.

Judge Wardlaw in delivering the opinion of the court of errors in *Beckham and DeSaussure, vs. DeSaussure,* (*IX Richardson's Law, p. 546,*) which is relied on alike as *res adjudicata* 56
and as an opinion that this court should follow from its intrinsic merits, says " *Issue* when used as a word of *limitation* is equivalent to *heirs of his body*, and *issue male* so used like *heirs male of the body*, defines an estate which, according to the rules of inheritance well settled in England, can descend only to males whose descent from the proposed ancestor has been wholly through males. But where *issue* is not used as a word of limitation its natural and primary meaning without explanation is *descendants in every degree* whether heirs or not, and in like case the meaning of *issue male, is descend-* 57
ants that are males. Those who in the construction of a will would depart from the primary and natural meaning of these terms, must show a different meaning is fixed by explanations which are furnished by the will itself taken in connection with the circumstances under which it was made. *That task the defendant here assumes.*"

Just here we will say that if the defendant in that suit, William D. DeSaussure, undertook any such task as the volunteer representative of the defendants in error for whom we speak, we utterly repudiate his representation. If he as- 58
sumed the task of showing that the title of Dr. Davie, from whom he claimed to have a lease, or of whose heirs he was taken as the nominal representative, rested their case upon a construction of the terms of Genl. Davie's will in opposition to their primary and natural meaning, and assumed the task of establishing that which the law itself assumed, and was worsted in his efforts to alter a presumption of the law, it is all the more reason that the real parties in interest, the defendants now before the Court, should not be bound by his voluntary championship of their interest, and all the stronger 59
reason for this Court disregarding a decision founded upon a

burden of proof so improperly assumed. We on the contrary maintain that the primary and natural meaning of issue, if it can be said to have any, is not descendants in every degree, but immediate offspring; and that any other meaning is technical. And we shall show that Genl. Davie used it when he would as a word of limitation, with full knowledge of its effect as such, and when he had occasion to use it as a word
60 of purchase he also knew how to do so.

We decline the task we are told that he who answered for the plaintiffs in this case assumed, and on the contrary we charge upon the present plaintiff in error the burden those must bear who in the construction of a will would depart from the primary and natural meaning of the terms, and must show how a different meaning obtains.

We can conceive of no other means of ascertaining the primary and natural meaning of the terms of a will than by reference (1) to the construction of those whose interest first
61 required their consideration, and (2) to their use by the standard authors of the English language.

(1) Our first business is with the construction put upon the terms of the will by those to whom interest must have rendered them long familiar, reserving for our consideration their use by standard authors when we come to consider their legal effect.

The action of *Bechham & DeSaussure v. DeSaussure* was commenced 9th September, 1854. But the terms of the will it called in question had long been familiar to those interested.
62 Its terms had been divulged on the 5th November, 1820, and they were such as must have commanded the attention of the family, and particularly of William F. DeSaussure, a son-in-law of General Davie, who was named executor. Under it Frederick William entered and took possession, and afterwards married and had a son. His wife died and he married again, and the son he had by his first wife died, and none other was born to him. Upon the death of this son it must surely have occurred to Hyder Alli to consider whether, if Frederick William died before him, without a son or grandson, son of a son,
63 and he (Hyder Alli) took, and dying left a grandson, son of his only child, a daughter, the estate so vested in him would or

would not become absolute? But time went on and Frederick William still had no other son, when Hyder Alli himself died leaving no son, but grandson by his daughter, and leaving also his will by which he devised all his estate to his brother Frederick William, Lewis A. Beckham and William F. DeSaussure as trustees. Can it be doubted that the terms of Gen'l Davie's will were the subject of earnest consideration to the trustees under Hyder Alli's will, to ascertain what interest, if any, there were under it, which it was their duty to protect; and that if a doubt had existed as to the destination of the Landsford property it must then have been considered? Time again went on, and Frederick William died 9th April, 1850, and left no son. The will had thus been open to the family for nearly thirty years, and the incidents had been such as to call and recall it to their consideration. Surely, then, if there had been a doubt as to the terms it would have been raised. But there was none, even in the minds of General Davie's son-in law and executor, who afterwards so warmly espoused the cause of the Bedons and so pertinaciously pressed it.

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It is however a remarkable and fortunate circumstance to the defendants in error, that intentionally and otherwise each and every adult person interested in this devise has left most direct and positive testimony to his acquiescence in the construction of the will in favor of the defendants in error, and of his understanding of its natural and primary meaning.

66

Mr. DeSaussure has already appeared to us as the son-in-law and executor of General Davie, and as the trustee of Hyder Alli; but in the case of F. G. Fraser, Exor vs. William R. Davie, et. al. (*Record pp. 27–32.*) he appears in another character, that of counsel of Frederick William's estate. On the 28th June, 1850, he filed a bill in equity against his son William Davie DeSaussure, who had qualified on Frederick William's will upon Frederick G. Fraser's death. In the first suit he is advising and representing the estate of Frederick William Davie; in the second he is suing the estate of Frederick William Davie upon the very

67

same matter. But our present purpose is what he says as to the common acceptation of the construction of the will. (*Record folois 65–66.*)

Representing the estate he says that the executor F. G. Fraser *under the entire conviction that as Hyder Alli died without any sons, that the plantation Landsford went over to Wil-*
68 *liam R. Davie the defendant, as the eldest male issue of Allen Jones Davie living at the death of Frederick William Davie,*" had taken a lease from Dr. Davie who had entered under the devise, but alleges that he has since been advised that construction was erroneous, that the grandsons of Hyder Alli, the sons of Hyder Alli's daughter, fulfilled the description of *issue male,* and that Hyder Alli's *heirs at law* were entitled instead, and prayed relief in equity against this lease he had thus entered into through mistake. It was then the first conviction of Mr. Fraser, F. W. Davie's executor, and of
69 Mr. DeSaussure himself as his adviser that Dr. Davie was entitled under Gen'l. Davie's will.

But the bill goes on to allege further, Mr. DeSaussure himself writing it, *that the received opinion of the family of Genl. William R. Davie long before the death of Frederick William Davie was that William Richardson Davie the eldest issue male of Allen Jones Davie would under the devise aforesaid be entitled to the lands aforesaid at the death of his uncle Frederick William Davie without leaving male issue, that your orator*
70 *himself was of that opinion, and the said William R. Davie claimed the lands under that belief.*

The bill drawn by Mr. DeSaussure goes on further to say, (Record p. 66-67) That your orator (i. e. F. G. Fraser) has been informed *and believes that his testator Frederick William Davie always regarded William Richardson Davie as entitled to the lands in the event of his own death without issue male, and shortly before his own death, wrote to the said William R. Davie then a resident of Alabama, to come to this State in order*
71 *that he might make some arrangement with him in relation to the said lands, feeling that his own life was very precarious and*

uncertain, that William R. Davie did accordingly in compliance with the wish of his uncle, make a journey to Carolina, but did not arrive till after his death.

We have here Mr. DeSaussure, a member of the family, as well as counsel, drawing and signing, and Mr. Fraser, Frederick William's brother-in-law and executor, making affidavit to the statement—for the bill is under oath—that 72
the received opinion of the family was that under the terms of the will the father of the defendants in error was entitled to the estate, and that Frederick William also shared in and acted upon this opinion and sent for Dr. Davie to arrange with him in relation to the lands after his death.

But there was another person whose duty it was to inquire, and to ascertain and take possession of whatever estate Hyder Alli's daughter and her children were entitled to, and he was Lewis A. Beckham, trustee under Hyder Alli's will and one of the plaintiff's in *Beckham & DeSaussure vs. DeSaussure*, and he, too, has left evidence of his 73
acquiescence at the time in the received opinion of the family. He is not only one of the witnesses to the lease which Mr. Fraser took from Dr Davie but the attesting witness who makes oath that he saw William R. Davie sign, seal and deliver the lease. Surely he, too, agreed that Dr. Davie had the right to enter upon, take and lease the lands under General Davie's will.

There is strongest reason to believe, too, that Hyder Alli himself had the same view in regard to his father's will. 74
In his own will made three years before Frederick William's death he makes no mention or provision for this accession to his estate, but on the contrary, he devises his whole estate, real and personal, to certain trustees, one of whom is Frederick William himself. This he would scarcely have done had he expected his daughter or her children to have taken the Landsford estate at his death.

We have, then, Frederick William himself. William F. DeSaussure and Lewis A. Beckham, the trustees unde Hyder Alli's will, and Frederick G. Fraser, executor of 75
Frederick William, all leaving in writing their acquiescence in the construction of the will for which we contend. Is it

not, then, strange to call upon us to bear the burden those must assume "who, in the construction of a will would depart from the primary and natural meaning of the terms of the devise."? Surely, then, since by the unanimous consent of all interested Dr. Davie entered as entitled under the primary and natural meaning of the terms of his grandfather's will; and that with the knowledge and consent of the able lawyer in the family who had been familiar with its terms for more than thirty years, the Court will, in the language of Judge Wardlaw, call upon the plaintiff in error, instead of the defendants, "to show how a different meaning is fixed by explanations which are furnished by the will itself taken in connection with the circumstances under which it was made."

76

(2). Le us next inquire as to the use of term "issue" by the standard author of the English language and by legal writers and Judges.

77

That the word *issue* can have but one of two legal effects, either that of a word of *limitation* or a word of *purchase*, was settled a hundred and twenty-five years ago. In 1767 Ch. J. Wilmot said that the word issue is either a word of limitation or of purchase. *2 Wilson, 325.* And from that time his dicta has been followed and quoted and incorporated into every text book upon the subject, and to this maxim Judge Wardlaw yields his assent.

We are content to rest our case upon his postulate quoted above that issue when used as a word of limitation is equivalent to heirs of the body; and issue male, so used like heirs male of the body defines an estate which according to the rules of inheritance can descend only to males whose descent has been through males.

78

We will show that General Davie well understood these rules and that he used the words "issue male," with full knowledge of their significance, using them as words of limitation or of purchase as suited his intentions, and that in each instance of his use of them he has left indisputable evidence of the sense in which he employed them.

79

There are four contingencies contemplated in the will upon

the happening of which the fee in the lands is to be shifted from one person to another.

1. Frederick William's death without *issue male.*
2. Hyder Alli's death without *issue male.*
3. Death of Frederick William's issue male, *without leaving issue male.*
4. Death of Hyder Alli's issue male, without leaving *issue male.* 80

Judge Wardlaw says that where the word "issue" is not used as a word of limitation its natural and primary meaning is descendants in every degree whether heirs or not and in like case the like meaning of "issue male" is descendants that are males.

We do not think that the word "issue" can be said with accuracy to have any primary and natural meaning other than that which issues or proceeds from. It is not to be 81
found in any legal dictionary or abridgment that we have been able to examine except *Bouvier's*, and he only says of it that "the term (issue) is of very extensive import *and in its most enlarged* signification, and includes all persons who have derived from a common ancestor. All the lexicographers that we have referred to except Worcester who quotes Bouviers definitions just given, and Webster who says that in law it includes all persons from a common ancestor—all lineal descendants to wit: Bailey, Johnson, Sheridan, Walker, Richardson define it to mean "progeny," "offspring" 82
and add "issue in law *are children together between man and wife.*" After diligent search we have been unable to find an instance in the works of standard authors for the use of the word as applied to any but children.

We think then it is clear that the primary and natural meaning of the word 'issue," if it has one in this respect, is, children begotten of man and wife—one may speak of his son as *his* issue, but his grandson is no more *his* issue than he is the issue of *another*, the other grandfather—a child has 83
only one father but two grandfathers.

In the case of *Algood vs. Blake*, and Eng. Reports (Moake Ed.) 449. The Court (Exchequer) says: "It was urged by the learned counsel for the plaintiff's that properly the word "issue" referred to procreation not inheritance, the word "heirs" to inheritance and not "procreation," and the words "heirs of the body" to pro-creation and inheritance. But
84 though this is the primary sense of the words taken by themselves, yet we know frequently the word "heirs" taken with this contest becomes "heirs of the body," and the word issue when used in a will in connection with previous estate, and with limitations in default of issue refers to inheritance as well as procreation and is equivalent to heirs of the body.

The word "issue" is never used in a deed poll A conveyance to one and his issue will convey but a life estate for it is not a word of inheritance. It is found only in wills
85 and indentures relating to marriage settlements—strictly speaking it can scarcely be said to be a *technical* word, but it has nevertheless acquired a certain technical signification the *prima facie* meaning of which—for we prefer to follow many of the judges in *Roddy vs. Fitzgerald, 6 House of Lords, cases 823*, in the use of the term *prima facie* rather than to speak of its natural and primary meaning—is equivalent to *heirs of the body*.

It appears therefore that the word "issue" though not
86 strictly speaking, originally a technical word has acquired in wills a certain technical legal effect as Fearne in reviewing *Perrin vs. Blake*, (*Contingent Remainders, 149*) says that "issue" has not the same established legal import and extent as the word "heirs" and less technical force ; and in his work on *Executory Devises* §509, explains that in a deed it is, a word ill-adapted for a word of "purchase" and only so construed because that is the only construction by which it can be operative, and not because it is aptly a word of purchase ; and on a page or two after he goes on to show that
87 though the word issue, is not the technical word of limitation that it is ill-adapted for a word of purchase.

The case of *Roddy vs. Fitzgerald* above cited which was elaborately argued and considered before the House of Lords in 1858 fully establishes that the word "issue" was *prima facie* to be considered *a word of limitation.* This was the precise form in which each of the learned judges* based his opinion in answer to the questions put by the Lord Chancellor.

It is clear, therefore, that the technical as well as primary 88
meaning of the word *issue* is that of a word of limitation, and as Judge Wardlaw himself says where used as a word of limitation is equivalent to *heirs of the body ;* and *issue male* so used like *heirs male of the body* defined an estate which can descend only to males whose descent from the proposed ancestor has been *wholly through males ;* and that under this technical and primary meaning of the words *issue male,* in this case, the plaintiff in error whose descent is through a female cannot take.

But on the other hand it is equally clear that when Gen'l. 89
Davie desired the "issue male," to take as a *purchaser* he well understood the necessity of adding words to clearly express his purpose. When he comes to *give* to the eldest *issue male,* of Allen Jones, in the last contingency, fully aware that a son of a daughter might take under the words "issue male," as words of purchase he is careful in each contingency to add "*that is of the sons,*" and "*being of the sons.*"

The same learned Judge, whose opininn is pressed upon in this case, in delivering the opinion of the Court of Appeals, in *Buist & Dawes, IV. Richardson Law 430,* lays 90
down this rule for the construction of a will.

"I can know the intention of the testator from the words of his testament—construction is proper to ascertain the meaning of words—never to discover an intention outside of them. The testator's own definition, where he has given one, is decisive of the sense in which he used a word. Such a definition may sometimes be found in the context, sometimes be supplied or aided by evidence concerning the condition of the testator's family, her property or other matters which show circumstances under which a word was used,

*Baron Chanwell, Mr. Justice Compton, Mr. Justice Williams, Lord Cramworth, Baron Watson, Baron Bramwell, Mr. Justice Erle, Mr. 91
Justice Coleridge and Lord Wensleydale.

But if there be nothing to show that words were used in a peculiar or extraordinary sense, I understand them in their ordinary sense and give to technical words a technical meaning; technical phrases a technical effect."

Applying this rule, so well expressed by Judge Wardlaw, we ask the Court to give to the words of the testator, in this will, the ordinary, primary and technical effect of the
92 words issue male, as defined by the authorities we have quoted; and the more especially as Chancellor Johnston argues, p. 34, p. 40, as General Davie has in the third clause of the provision of the will in question, himself defined the use of the word in accordance with its primary and technical effect

Let us turn to the devise upon the third contingency. It is in these words:

And should my said son, Frederick William have issue male, and such issue male, of my said son Frederick William should or shall
93 die without issue male, living at the time of his death, then and in that case it is my will and I do devise the lands and real estate so devised above to my son Hyder Alli and his heirs, and then to the eldest issue male, living at the time of Allen Jones Davie *under the same limitations* and on the same contingencies and in the same order and manner (as above directed and devised *should my son, Frederick William die without issue male*, living at time of his death) to them and their heirs forever.

It is clear from this clause that General Davie used the word "issue" as a word of *limitation* in every instance, except when he wished to *give to the issue*, and in that
94 case he added words to allow the issue to take as *a purchaser*.

As we understand General Davie's will, the estate which Frederick William first, and then Hyder Alli were to take was a *fee simple*, for it was in each instance "to him and his heirs forever." But it was an estate in *fee simple defeasible*, for under certain contingencies it was, in each instance, to pass from the tenant. It was a *fee simple* DEFEASIBLE UPON AN EVENT (which, under the law of estates, in
95 England), WOULD HAVE DEFEATED AN ESTATE TAIL MALE; that is, upon the failure of *issue male*, males

descended through males, and the time was definitely fixed to be, upon the death of Frederick William and Hyder Alli respectively.

1. That it was an estate in *fee simple* is scarcely necessary to argue, for as Judge Wardlaw observes, "that is the obvious result of the words" to him and his heirs, industriously used and in all probability well understood by the testator. 96

2. It was an estate in *fee simple* DEFEASIBLE, that is it was an estate "subject to be defeated by the operation of a * * * limitation." *Fearne's Rem., 2 Vol, Sec. 97.* It was an estate in fee simple *on condition* that Frederick William died leaving "issue male," and upon his dying without such issue male it did not revert to the heirs general of the testator only because there was by way of executory devise a limitation over to Hyder Alli of a like fee simple on a like condition; and again upon *his* dying without such "issue male" a like limitation over to the eldest issue male of Allen Jones. 97

It was an estate of "*a determinable quality*," that is, in its creation there was a qualification serving to mark out the bounds of an estate, so as to determine it *ipso facto* in a given event without action, entry or claim, before it would or might otherwise expire by force according to the general limitation (*Feame Rem., Sec. 34,*) to him and his heirs forever. (*Ibid 21*)

It was an estate in *fee simple* DEFEASIBLE, that is, an estate which upon the happening of a given event would be "limited," "defined," "circumscribed," "defeated"—which event was the death of Frederick William and Hyder, respectively, without "*issue male.*" 98

3. It was an estate *in fee simple* DEFEASIBLE upon an event which under the laws of England would have defeated an *estate tail male*, that is, upon the event of the failure in either instance of "issue male," *male descended through males.*

And herein we think is the mistake in the case. Judge Wardlaw in his opinion would hold us to the proposition that when we refer to the *estate tail male* we must do so as if that 99

estate was recognized with us. Whereas, the estate in *fee tail* is by virtue of the statute *de donis*, which was never of force in South Carolina. In other words, because we refer to that estate as defining what persons a lawyer intended to designate by using the terms *issue male*, we must intend that the persons when so ascertained would take the estate they would have done under the statute *de donis*. That if when ascer-
100 tained the persons would not take under the statute as it is not of force—they cannot be the persons intended, whose failure to vest would defeat the estate.

The construction of General Davie's will was undoubtedly peculiar. Without question he intended to create, as he might do by executory devise successive estates in fee simple, not fees conditional, nor tail, for the issue he mentions are to take nothing. To take no more than if the devise had been to Frederick William, to him and his heirs forever, but
101 that in case of his death without owning horses of a certain stock, then over to Hyder Alli; and if Hyder Alli died without owning such horses, then over to the eldest issue male of Allen Jones.

We might have to go to the authorities on the turf to ascertain the pedigree of the designated horses, but when ascertained the horses would take nothing, though on their existence and ownership depended the devolution of the title. Just so; but for no other purpose we go to the statute *de*
102 *donis* to inquire if the Bedons are of the issue male which the testator intended.

There is strong intrinsic evidence that our construction is a true one. At the time of the execution of General Davie's will, and at the time of his death, he had a grandson by a daughter, the son of a son-in-law whom he knew, who had so gained his confidence that he had appointed him guardian of the infant son to whom he was leaving his estate, and had named him executor of his will.

Now while General Davie gave nothing to the *issue male*,
103 except to the eldest issue male of Allen Jones, whoever that term might designate, no one can read the will and doubt

but that he wished to devise his estate in such a manner as that, that issue might be benefited. We say might be, not would be, for though indicating how he wished his property to descend, by making the estates of his sons defeasible upon the failure of issue male he left the estate, as Chancellor Johnston observes, in the power and control of his sons, probably with a view to secure them the dependence and consequent obedience of their children. Had General 104
Davie intended any male descendants through females an opportunity of preference to his heirs in general he surely would have taken care of this grandson by his own daughter, the son of a son-in-law known and approved by him—a grandson bearing his own name, William Davie DeSaussure—rather than to some future great grandson by some future grandson-in-law whom he could not know or approve.

It must be borne in mind that the Bedons, the family of the plaintiff in error, claimed the whole estate against some fifty of General Davie's other descendants amongst whom 105
at the entry of the judgment in this case there were still living two grandsons of his own name—sons of his eldest son, Allen Jones Davie, and two large families of great grandsons, all bearing the name which he distinguished. The desire to establish one's name and family, and to leave them a local habitation is natural, and the law even in this country will permit and to a certain extent provides for doing so. But if the plaintiff in error and his family were *Davies* and not *Bedons* the Court would require them to show that their ancestor intended them to enjoy his property to the 106
exclusion of all the other members of the family. Will the Court not hold the *Bedons* more strictly to the proof when they do not even bear his name?

In construing a will it is a fundamental rule that the intention of the testator is the polar star of its interpretation. Can any one, be he layman, lawyer or judge rise from the perusal of the will before the Court with a doubt upon his mind that General Davie intended to devise his estate in such a manner—and to indicate his wish beyond the time he thought it prudent to attempt to ex- 107
ercise his authority—so that some one of his name should

possess the estate he had spent the last year of his life in settling?

General Davie is known by his public services to his country as a brilliant soldier of the revolution—as Governor of North Carolina, ambassador to France, as a member of the convention which framed the constitution of the United States, and probably as the person beyond all others who
108 overcame the reluctance of North Carolina to enter the Union under that constitution; but beyond all this, and what is of importance in this case is that he was a skillful lawyer who had devoted himself especially to conveyances by wills. The special verdict in *Beckham and DeSaussure vs. DeSaussure* finds that he "*was a distinguished lawyer.*" Is it not remarkable that a will drawn by a distinguished lawyer should have been acted upon by all parties in interest for thirty years after his death—and that then a doubt having been suggested by a stranger, and submitted to the court and settled
109 by a decree—that all parties should have acquiesced—and that after all the construction so accepted and decided should have been altogether a mistake?

It is doubtless the well settled rule of the federal courts that they will adopt the decisions of the State courts as the local law of real property—whether grounded on the construction of a statute or the common law of the State. But the decision which the federal courts thus adopt and follow are those which declare rules affecting real property generally, and not those which construe particular wills or deeds. This
110 was declared by Mr. Justice Story in *Thomas vs. Hatch, 3 Sumner, 176* in which he refused to follow the state court in its construction of a deed; and again by Mr. Justice McLean delivering the opinion of this court in *Lane vs. Vick, 3 How. 476*; and yet again in *Foxcroft vs. Mallett, 4. How. 153*, and in *Pease vs. Peck, 18 How. 598*. And to the same effect is the more familiar case of *Gilpecke vs. City Dubuque, 1 Wall, 206*.

But in this case there are two decisions of the State court, one in favor of one side of the construction of this will, and
111 one upon the other. The first decided by one of the ablest chancellors the State of South Carolina has ever had, upon a

case with all the proper parties, properly before him, and from his decision in which there was no appeal, and which decision the special verdict finds remains unreversed. The other upon a fictitious case with no proper party to it decided by a divided court. Surely this court cannot be called upon to adopt without the fullest examination the decisions of the latter though it did happen to be the highest court of the 112
State.

We feel assured that this Court, if it will take the trouble to consider the terms of the will at all, after having seen that the plaintiff in error is estopped by the decree against his father in *Fraser vs. Davis* it will find that the first impression and construction which the family gave to the will upon reading it, was not only the primary and natural one, but that which had been carefully and skillfully intended and provided by the testator and which the court below has sustained.

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EDWARD McCRADY, JR.